

# Honored to Serve

Indiana Supreme Court  
Commission on Race and Gender Fairness  
Executive Report and Recommendations

2002





DECEMBER 20, 2002

Chief Justice Randall T. Shepard  
Indiana Supreme Court  
304 State House  
200 West Washington Street  
Indianapolis, Indiana 46204



*Dear Chief Justice Shepard:*

On behalf of the Commission, we are pleased to submit the final Report of the Indiana Supreme Court Commission on Race and Gender Fairness for your consideration. The Report is the culmination of three years of study and research on the part of the Commission. Our charge was to (1) study the treatment of racial and ethnic minorities in the State Judicial System and to examine questions of gender fairness in the Courts; (2) ascertain perceptions of fairness or lack of fairness in the judicial system; and (3) make recommendations on reforms and improvements.

Even before the formal work of the Commission began, we witnessed a greater sensitivity to the problems of race and gender bias as they affect women and minorities in the Courts, whether they are practicing attorneys, judges, witnesses, litigants, court personnel or other participants in the legal process. As we moved forward in our study and research, we found that Hoosier citizens and all three branches of government support the goal of eliminating racial, ethnic and gender bias, to the extent it exists, from our judicial system.

These findings, conclusions, and recommendations represent the collective effort of each and every Commission member, as well as the dedicated staff of the office of State Court Administration.

The recommendations set forth in the Report address a broad range of activities and endeavors. Thus, we hope that you will consider the Report not an end but a beginning of a plan to undertake further studies and acquire additional data on the complexities of race, ethnicity and gender in the administration of justice.

It has been a distinct pleasure to have been involved in the important work of the Commission as its Chair and Co-Chair. Thank you for appointing us to serve the judicial system in this way. We hope you will agree that the work represented in this Report, although not completed, does bring us closer to the goal of race, ethnic and gender fairness in Indiana's judicial system.

*Very truly yours,*

A handwritten signature in blue ink that reads "Myra C. Selby".

MYRA C. SELBY  
Chairman

A handwritten signature in blue ink that reads "E. Friedlander".

EZRA FRIEDLANDER  
Co-Chairman

## INTRODUCTION & History

When the Indiana Supreme Court Commission on Race and Gender Fairness embarked on its mission to study and make recommendations on race and gender issues involving the state judicial system, it wasn't exactly setting out on uncharted waters. By 1999, when the Commission was established, 40 other states had established race or gender task forces and various bar associations, federal district courts and others were studying the issues. In fact, the Commission wasn't even the first to look at fairness in the courts and legal system in Indiana; a task force of the State Bar Association had surveyed women lawyers on some of the same topics a decade earlier.

The Commission that was created in 1999, however, was something new to Indiana.

First, it was an official body, created by Supreme Court Administrative Rule, with assigned tasks: to study and make recommendations about race and gender issues in Indiana's judicial system and also to investigate ways of improving race and gender fairness in the courts and legal system and among legal service providers, state and local government and public organizations.

Second, it was a diverse group comprised of representatives of the judiciary, the bar, law enforcement, private law firms and government and was balanced as to race, gender and ethnicity, not to mention geography.

Third, it was lead by two Indiana jurists whose interests in diversity in the courts and legal profession was a matter of record: Former Indiana Supreme Court Justice Myra Selby, who chaired the Commission, had urged its creation in a 1999 article in the *Indiana Law Review*, and Court of Appeals Judge Ezra Friedlander, the vice chair, serves on the American Bar Association's Judicial Division Standing Committee on Minorities in the Judiciary.

Once it began putting together a strategy for carrying out its admittedly broad charge, the Commission and its staff learned from the work done by others. After reviewing the reports of other task forces and commissions, the Commission decided to gather information from Hoosiers in three distinct ways:

First, during the summer of 2001, the Commission sponsored seven public forums in six different areas of the state where members of the public were invited to share their thoughts about the legal system and how they were treated in the courts. Approximately 300 persons participated. A summary of the results of those forums appears in Appendix D of this Report;

Second, the Commission contracted with the Indiana University Public Opinion Laboratory for seven scientific surveys, which were taken in 2002. Approximately 1250 judges, court employees, attorneys and court users responded to surveys asking about their perceptions, observations and experiences with the courts. A summary of the results of those surveys appears in Appendixes A and B of this Report;

Third, the Commission contracted with ZQI, Inc., for 18 focus groups which were conducted in the summer of 2002. More than 120 court employees, attorneys and court users were interviewed as to their perceptions, observations and experiences with the courts. A summary of those focus groups appears in Appendix C of this Report.

This information, combined with data from law schools, government records and other surveys, formed the basis for the Commission Findings and Recommendations contained in this Report.



# Commission Race & Gender Fairness Members

**HONORABLE MYRA C. SELBY**, Chairperson

Indianapolis

Partner, Ice Miller

Former Justice of the Indiana Supreme Court

**HONORABLE EZRA FRIEDLANDER**, Co-Chairperson

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Judge of the Indiana Court of Appeals

**HONORABLE ROBERT D. RUCKER**

Liaison between Supreme Court and Commission

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Associate Justice of the Indiana Supreme Court

**HONORABLE LORENZO ARREDONDO**

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**SUSAN CARPENTER\***

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Public Defender of Indiana

**MELVIN J. CARRAWAY**

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Superintendent of the Indiana State Police

**HONORABLE DENNIS CARROLL**

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Judge of the Madison Superior Court

Member of the Supreme Court Select Committee  
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**RALPH COHEN\***

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Former Deputy Director/General Counsel, Indiana  
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**HONORABLE JANE SPENCER CRANEY**

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Member of the Board of Managers,  
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**HONORABLE JILL REIFINGER MARCRUM**

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Judge of the Vanderburgh Superior Court  
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**CAROLENE MAYS**

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Former Chair of the Women in the Law Committee  
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Indianapolis

**HONORABLE GERALD ZORE\***

Indianapolis  
Judge of the Marion Superior Court  
Former President, Indiana Judges Association

\* Subcommittee Chairpersons

## Types of Recommendations

LIKE MANY OF THE OTHER STATE AND JUDICIAL TASK FORCES, the Commission focused much of its efforts in gathering information about perceptions of fairness in the legal system. The results were fairly consistent with results in other places: While most believed the system was fair in most respects, many reported harsher treatment or barriers for women and minorities. Where possible, the Commission sought statistical information to test those perceptions for validity, but hard data was often lacking. The Findings contained in this Report are summaries of the information gathered with more expanded versions of the information contained in the Appendixes.

After reviewing the information, subcommittees of the Commission prepared Recommendations to address the problems identified by participants in the surveys, focus groups and public forums. The Recommendations fall into three general categories:

First, the Report contains Recommendation calling for **education, training or programs** to directly address perceptions of unfairness. Because mutual trust and respect are necessary for the legal system to operate effectively, immediate action is necessary to combat perceptions of race, ethnic or gender bias whether that bias is real or perceived, conscious or unconscious.

Second, the Report contains Recommendations calling for programs and plans to **reduce barriers** to full participation in the legal system. For example, when community forums, focus groups and surveys revealed communication barriers which must be addressed for the system to function, because those issues had to be addressed without delay, the Commission tendered Interim Recommendations that were approved in large part and efforts are already underway to address those issues.

Third, the Report contains Recommendations calling for the **gathering of more information**. In surveys, focus groups and community forums, participants highlighted issues that can only be addressed by legislation, rule or other systemic changes and which cannot be addressed properly without hard data which would shape the approach to those issues. Because such data is lacking in many cases, the Report contains Recommendations that the data be obtained. Although these issues may not be addressed substantively until the data is obtained, this delay should not effect the implementation of the other Recommendations.



## Commission Findings

The Treatment by the Courts Subcommittee examined how ethnic and racial minorities and women are treated both in the courtroom and within the legal system in general. The public hearings, surveys and focus groups revealed that, while the majority of judges, attorneys, court employees and court users reported that Indiana courts are generally free from race, ethnicity and gender bias, a significant minority of the participants had observed or experienced unfairness on the basis of gender, race or ethnicity. Additionally, each group identified factors that lead to perceptions of unfairness or that may have a disparate impact on minorities. Significantly, many of those factors are more closely related to general socio-economic concerns than race, ethnicity or gender. The findings of this subcommittee have been incorporated with Findings of the Commission as a whole.

### POPULATION DATA

The 2000 U.S. Census reported that more than 2,982,000 women live in Indiana making up 51 percent of the state's population. Approximately 774,000 residents, both male and female, or 11.4 percent are racial or ethnic minorities (black, American Indian, Asian, Pacific Islander), including 8.8 percent African-American and 3.5 percent Hispanic or Latino. More than 186,000 residents or 3.1 percent of the population were foreign-born, and more than half of them entered the United States between 1990 and 2000; approximately 77,500 of the foreign-born or 41.5 percent of those born outside the U.S. were born in Latin America. Moreover, while the total population of Indiana was projected to increase by about 8.2 percent between 2000 and 2025, the Hispanic population is expected to increase at a rate of approximately 73.6 percent and the black population is expected to increase at a rate of 22.5 percent.

- A. U.S. Census Bureau, QT-PL. Race, Hispanic or Latino, and Age: 2000, Indiana.
- B. U.S. Census Bureau, Table DP-1, Profile of Selected Social Characteristics: 2000, Indiana.
- C. U.S. Census Bureau, Table DP-2, Profile of Selected Social Characteristics: 2000, Indiana.
- D. U.S. Census Population Projections compiled in 1996, Projected State Populations by Sex, Race and Hispanic Origin, Series A.

### DISCRIMINATION OBSERVED

Although the vast majority of Indiana attorneys, court employees and others surveyed in 2002 report that courts in their county are fair with regard to gender, race and ethnicity, a significant minority report that they have observed courtroom harassment and disparagement on the basis of gender, ethnicity or race, including by judicial

officers. More of the discrimination appeared to be centered on gender than race, with much of it aimed at women attorneys and litigants. Similarly, a minority of the judicial officers reported that attorneys, litigants, witnesses, court employees and even judges had been subjected to gender or race-based disparagement, most often on the basis of gender and most often by attorneys.

- A. Cohenour, Vargus, Hutcherson, O'Brien & Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 12-26.
- B. Cohenour, Vargus, Hutcherson, O'Brien & Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 13-15, 20-24 and 41-46.
- C. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6 and 13.



### TREATMENT DIFFERENCES

Nationally, there is a perception that non-English speakers, Hispanics and African-Americans are not treated as well as others in the courts. For example, a national survey from 1999 showed 54.9 percent of respondents saying non-English speakers were at a disadvantage in the courts. Slightly more than 46 percent said Hispanics and African-Americans were similarly at a disadvantage. When asked specifically about "people like them," two-thirds of the African-Americans said they were treated worse than others and more than 40 percent of others surveyed agreed. While 33 percent of Hispanics said that as a group they were treated worse than others as a group, 47 percent of white non-Hispanics agreed as did 60 percent of the African-Americans surveyed. Those perceptions were echoed by participants in Indiana focus groups.

- A. National Center for State Courts, How Public Views State Courts, 1999.
- B. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6, 13, 21, 22, 23, 24-25 and 30.

#### **LITTLE DATA**

While some attorneys, court employees, judges and others perceive that gender, race, and ethnicity may influence decisions in various types of judicial proceedings and that gender, race and ethnicity influence the way people are treated in the legal system, Indiana courts and agencies in Indiana collect little data that would allow tracking the role of gender, race or ethnicity in those proceedings. A significant minority of the persons surveyed, however, report having observed disparagement on the basis of race and gender in Indiana courtrooms, especially as to litigants and witnesses.

- A. Cohenour, Vargus, Hutcherson, O'Brien & Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 13-15, 20-24 and 41-46.
- B. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6, 30, 33, 34 and 35.
- C. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 12-23.
- D. Interviews with Judicial Center, State Court Administrators Office, Criminal Justice Institute and court administrators.
- E. Community Meetings. Appendix D at 2-4.

#### **GENDER ISSUES**

Women attorneys report they are often not treated with the same dignity and respect as male attorneys and are denied advantages provided their male counterparts. They report they have been subjected to demeaning and sexist remarks and conduct by colleagues, opponents, litigants, judges and court personnel. They perceive they have been ignored and excluded, disparaged on the basis of gender and report having been subjected to derogatory references ranging from "little lady" to "bitch." Some within larger or medium-size law firms believe they have been denied opportunities to develop clients that are afforded their male colleagues; those outside sizable firms report more difficulty transitioning into the profession. These perceptions are consistent with findings of an Indiana State Bar Association survey a decade ago and reports from other states that have studied the issue.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court

Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 6-8, 13-14, 20-22 and 41-42.

- B. Zurick, Focus Group Research Report, September 2002. See Appendix C at 9, 28, 30, 36, and 38-39.
- C. Indiana State Bar Ass'n, Report of the Commission on Women in the Profession (1991).

#### **RACIAL ISSUES**

While male minority lawyers rarely report that they are faced with explicit disrespect by court personnel or opposing counsel, there are indications that they too are disparaged on the basis of race by opponents, judges and court personnel.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 17.
- B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 8, 13-14, 22-23 and 42-44.
- C. Zurick, Focus Group Research Report, September 2002. See Appendix C at 9, 29, 30 and 37.

#### **COORDINATION EFFORTS**

Although the Supreme Court, various judges, attorneys, organizations and agencies within Indiana have supported efforts promoting race and gender fairness in the courts and legal system, e.g., amendment of Code of Judicial Conduct to address race and gender bias, there appears to be little or no coordination of efforts and no one entity has been charged with the responsibility of leading or coordinating such efforts. In many states, including New York, Michigan, New Jersey and Utah, implementation entities were established to coordinate efforts to promote race and gender fairness issues in the courts and legal system. In New York and Rhode Island, where 1986 surveys on gender bias in the legal system revealed significant perceptions of unfair treatment and implementation bodies were named to implement recommendations, significant improvements were noted in 2002 and 1998 respectively when the issues were revisited.

- A. Interviews and Observations
- B. National Center for State Courts website.
- C. New York State Judicial Committee on Women in the Courts, Women in the Courts: A Work in Progress, April 2002.
- D. Rhode Island Permanent Advisory Committee on Women in the Courts, Gender Bias in the State Courts (1998).



## Commission Recommendations

### RECOMMENDATION ONE

That the Commission be renewed, with appropriate staff, for another four years to oversee and implement the recommendations in the current report and issue another report regarding the results of any further studies or investigations, progress toward implementation of recommendations and status of race and gender fairness in Indiana's justice system no later than December 2004.

**Purpose:** To identify and remove barriers to full participation in the legal system that lead to a perception of unfairness based on gender, race and ethnicity and to coordinate efforts to improve the legal system by promoting inclusion, diversity and understanding.

**Implementation:** The Supreme Court should renew the Commission for at least another four (4) years, supply appropriate funding and staffing, either reappoint the current commissioners or appoint successors, and amend Administrative Rule 4 (C) to permit the Commission to oversee and coordinate efforts to implement the Recommendations contained in this Report.

**Alternatives:** The Court could appoint a separate body to oversee implementation and coordination of these Recommendations.

**Fiscal Impact:** Moderate; budget could remain at present level.

### RECOMMENDATION TWO

That a conclave be convened in 2004 consisting of representatives of the judiciary, bar, law schools, bar associations, law enforcement, corrections and other entities who have demonstrated an interest in race and gender issues in the legal system to coordinate efforts for proper implementation of the Recommendations and fostering gender, race and ethnic fairness in Indiana's justice system.

**Purpose:** To coordinate efforts and foster discussion and cooperation between interested parties to remove barriers to full participation in the legal system that lead to a perception of unfairness based on gender, race and ethnicity and to coordinate efforts to improve the legal system by promoting inclusion, diversity and understanding.

**Implementation:** The Commission shall convene a conclave in 2004 regarding Gender, Race and Ethnic Fairness similar to that convened by the court and law schools on legal education in 1997. Representatives of interested parties and stake-

holders in the justice system would meet to discuss implementation of the Recommendations and other efforts to promote gender, race and ethnic fairness in the courts, legal system, government organizations and the profession.

Participants would be eligible for credit toward continuing legal education or pro bono requirements where appropriate.

**Alternatives:** The Supreme Court, as opposed to the Commission, could convene such a conclave or the Commission could request that some other organization, such as the State Bar Association or the Indiana Continuing Legal Education Foundation or a law school, organize such a meeting and cooperate with its efforts.

**Fiscal Impact:** Minimal to moderate.



### RECOMMENDATION THREE

That at least one hour of every program on Applied Professionalism — the legal education program required for every new attorney — contain materials that promote awareness, understanding and sensitivity to issues of racial, gender and ethnic fairness to underscore that fairness and equitable treatment is a foremost concern in the justice system of a just society.

**Purpose:** To promote an understanding among new attorneys that inclusiveness and diversity are valued in the legal profession and that fairness and understanding of gender, race and ethnicity issues are required in the justice system.

**Implementation:** The rules for the Commission on Continuing Legal Education shall be amended to include a requirement for such materials and the Commission on Race and Gender Fairness or the body charged with implementing these Recommendations shall develop standards and suggested materials in cooperation with the Commission on Continuing Education, the Women's Committee of the State Bar Association, the Committee for Racial Diversity in the Legal Profession and other appropriate groups to provide persons or groups sponsoring programs on Applied Professionalism.

**Alternatives:** The Commission shall offer its services to CLE providers and others interested in developing materials but would not develop standards or materials itself.

**Fiscal Impact:** Minimal.

To promote an understanding and awareness that inclusiveness and diversity are valued in the legal profession and that fairness and understanding of gender, race and ethnicity issues are required in the justice system.

#### RECOMMENDATION FOUR

That at least one session of every educational meeting of the Judicial Conference be devoted to promoting awareness, understanding and sensitivity to issues of racial, gender and ethnic fairness to underscore that fairness and equitable treatment is a foremost concern in the justice system of a just society.

**Purpose:** To promote an understanding and awareness among the judiciary that inclusiveness and diversity are valued in the legal profession and that fairness and understanding of gender, race and ethnicity issues are required in the justice system.

**Implementation:** The Commission on Race and Gender Fairness or the body charged with implementing these Recommendations shall work with the Indiana Judicial Conference and Office of State Court Administration to develop materials and programs to be presented at Judicial Conference meetings.

**Alternatives:** The Commission shall offer its services to the Judicial Conference to aid with materials and programs but would not develop materials independently.

**Fiscal Impact:** Minimal.

#### RECOMMENDATION FIVE

That the Prosecuting Attorneys Council and the Public Defender Council be encouraged to include one session of programming a year promoting awareness, understanding and sensitivity to issues of racial, gender and ethnic fairness to underscore that fairness and equitable treatment is a foremost concern in the justice system of a just society.

**Purpose:** To promote an understanding and awareness among prosecutors and public defenders that inclusion and diversity are valued in the legal profession and that fairness and understanding of gender, race and ethnicity issues are required in the justice system.

**Implementation:** The Commission on Race and Gender Fairness or the body charged with implementing these Recommendations shall work with the Prosecuting Attorneys Council and the Public Defender Council to develop materials and programs to be presented at their meetings.

**Alternatives:** The Commission shall offer its services to the Prosecuting Attorneys Council and Public Defender Council to aid with materials and programs but would not develop materials independently.

**Fiscal Impact:** Minimal.

#### RECOMMENDATION SIX

That steps be taken to address issues of disrespect, incivility and disparagement of women and minorities, whether real or perceived, and that mentoring programs be established to assist with transitions into the profession.

**Purpose:** To remove barriers to full participation in the legal system that lead to a perception of unfairness by persons within the profession and to foster an atmosphere of respect, professionalism and civility.

**Implementation:** The entity charged with implementing these Recommendations should work with committees of the state, local and minority bar associations in the state to investigate perceptions of unfairness and disparagement of women and minorities in the profession and legal system and develop appropriate strategies to address the issue. Judges should be encouraged to monitor behavior in the courtroom and the litigation setting and should intervene swiftly when they become aware of inappropriate, disrespectful or disparaging conduct toward women and minorities and should refrain from engaging in or encouraging it. Bar associations should be encouraged to address such issues in programs on civility and ethics and should alert their members and grievance committees that inappropriate, biased and disrespectful conduct and language are not to be tolerated. Law firms and bar associations should establish or expand mentoring programs whereby mentors are teamed with less experienced lawyers and are charged with helping them address and overcome such barriers.

**Alternatives:** The entity charged with overseeing implementation of these Recommendations could convene a meeting of appropriate committees of the various bar associations to address these concerns and then coordinate local efforts during 2003.

**Fiscal Impact:** Minimal to moderate depending on whether additional surveys or focus groups are needed to further investigate the issue.

To remove barriers to full participation in the legal system that lead to a perception of unfairness by persons within the profession and to foster an atmosphere of respect, professionalism and civility.



## Makeup of the Profession Findings

The Makeup of the Profession Subcommittee examined issues of race, ethnicity and gender primarily in legal education, private law firms and the judiciary. No statistics were gathered concerning employment of attorneys by government or corporations. The research reflects that the four law schools within Indiana have made significant strides toward enrolling women and minorities and that Indiana statistics regarding gender in the profession are similar to many sets of national statistics. Statistical disparities do exist, however, between the number of women judicial officers in Indiana and those nationally and between the number of minority lawyers in law firms in Indiana and nationally.

### LAW SCHOOL ENROLLMENTS

Although women and minorities appear to enroll in law schools in Indiana in proportion to their representation in the population and in line with national statistics and their numbers are rising, African-American males appear to be under-represented and minorities in general may be graduating at lower rates than other students. Specifically:

**General Demographics:** In 2000, 51 percent of the state's population is female, 11.4 percent are racial or ethnic minorities, including 8.8 percent African-American;

**National Enrollments:** In 2001, 49 percent of law school students are women and 20.6 percent are racial or ethnic minorities;

**Indiana Enrollments:** In 2001, 44.4 percent of law school students were women and 14.8 percent were racial or ethnic minorities. In three of the four law schools

in Indiana, female African-Americans enroll at twice the rate of African-American males. Minority law school enrollment in Indiana has doubled between 1990 and 2001 and female enrollment increased by approximately 20 percent. Minorities represented 10.2 percent of the 2001 law school graduates in Indiana.

A. U.S. Census Bureau, Table DP-1, Profile of Selected Social Characteristics: 2000: Indiana.

B. American Bar Association Statistics from 1990 and 2001.

C. American Bar Association Statistics gathered from law schools in Indiana in 2001.

### ADMISSIONS

Women and minorities are admitted to the four law schools in Indiana at rates roughly proportional to other students.

**General Admissions:** Three of the four law schools in Indiana reported that roughly 45.5 percent of all applicants were admitted to their schools.

**Specific Female/Minority Admissions:** Two schools

accepted 44.4 percent of female applicants and 48.4 percent of minority applicants. Another law school accepted women and minority applicants within 1 percent of their representation in the applicant pool.

**Increases Noted:** All four schools showed significant and steady increases in the numbers of women and minorities who had applied and were accepted over the past 10 to

15 years.

A. Statistics maintained by individual law schools and provided to the Commission.

### ATTORNEYS

Approximately 27.4 percent of attorneys in Indiana in June 2002 were women as opposed to 29.7 percent of the attorneys nationally in 2001. The Indiana Clerk of Courts, the keeper of the roll of attorneys, does not, however, keep statistics as to the

ethnic or racial makeup of attorneys in the state.

A. American Bar Association Statistics for 2001.

B. Interview with Clerk of Court representative, June 2002.

### LAW FIRMS

Indiana law firms employ minority lawyers at far lower rates than firms nationally and at much lower rates than minorities graduate from law schools within Indiana. Law firms in Indiana employ women associates at a slightly higher rate than firms nationally and at roughly the same rate that women are enrolled in law schools in Indiana, but, with the exception of Indianapolis firms, have fewer female partners than firms in other parts of the country. Moreover, the number of women and minority associates and partners plummets when statistics from the three largest law firms in the state are removed from the equation. Specifically:

**Women Nationally:** Women comprised 15.6 percent of law firm partners and 41.7 percent of law firm associates in 2001.

**Women in Indiana:** Reports from 45 Indiana law firms



reveal that women comprised 13.3 percent of law firm partners and 45.9 percent of law firm associates in 2001. **Minorities Nationally:** Racial and ethnic minorities comprised 3.35 percent of law firm partners in 2001 and 12.86 percent of law firm associates.

**Minorities in Indiana:** Reports from 45 Indiana law firms reveal that 1.7 percent of law firm partners were minorities and 4.5 percent of law firm associates were minorities in 2001. The three largest law firms in the state have all the minority partners reported and 59.4 percent of the minority associates.

**Indianapolis:** A sampling of Indianapolis law firms in 2001 revealed that 16.4 percent of partners were women and 2.05 minorities; and 44.95 percent of associates were women and 7.14 percent of associates were minorities.

- A. National Association of Legal Placement Foundation, Women and Attorneys of Color at Law Firms - 2001.
- B. Compilation of data contained on forms submitted to three law school placement offices in Indiana in the fall of 2001.
- C. ABA Commission on Women in the Profession, Current Glance of Women in the Law 2001.

#### **OTHER LEGAL EMPLOYMENT**

The Commission did not gather statistics as to demographics in government offices or legal service organizations where women and minorities are generally employed at a higher rate than in private law firms. Indiana courts do not keep statistics on the race or gender of judicial law clerks.

Statistics were not gathered as to demographics in corporate legal departments in the state. Nationally, 12 percent of the general counsel positions in Fortune 500 companies in 2002 were held by women.

- A. ABA Commission on Women in the Profession, The Unfinished Agenda: Women and the Legal Profession, 2001.
- B. Interviews with state court administrators, June 2002.
- C. ABA Snapshot of Women in the Law in the Year 2000.
- D. Personal observations of Commission staff.
- E. "Are We There Yet?" Corporate Counsel, May 20, 2002.

#### **LAW SCHOOL FACULTIES**

The four law schools in Indiana employ women and minorities at roughly the rate as other law schools in the nation and have increased those rates in recent years.

**Specifically:**

**Indiana:** In the fall of 2001, women comprised 32.7 percent of full-time law faculty and 26.6 percent of part-time faculty; minorities comprised 8.5 percent of full-time faculty and 4.2 percent of part-time.

**Nationally:** Women comprised 32 percent of law school faculties; overall minority figures were unavailable.

**Deanships:** In the fall of 2002, two of the four law schools in Indiana had women deans, albeit one on an interim basis, as compared to 11 percent of the law schools nationally having women deans in 2001.

- A. American Bar Association Statistics gathered from law schools in Indiana in 2001.
- B. American Bar Association Statistics from 1990 and 2001.
- C. ABA Commission on Women in the Profession, The Unfinished Agenda: Women and the Legal Profession, 2001.

#### **JUDICIARY**

Women appear to be represented within the state judiciary in similar proportion to the nation as a whole and the state of New York but are not represented in the federal judicial system at the same rate as women nationally.

**Specifically:**

**Nationally:** In 2002, women comprised 24 percent of the judges on state courts of last resort and appellate courts.

**Indiana:** In 2002, women hold 19 percent of the seats on the state supreme and appellate courts, 15 percent of all state judgeships, most of which are elected, and 34.8 percent of state magistrate and commissioner positions.

**New York:** In 2002, New York -- which like Indiana has a mix of appointed and elected judges -- had women in 25 percent of all judicial positions, up from 11 percent in 1988, and in 18 percent of the elected judgeships.

**Federal Judicial Officers:** Nationally, 19.2 percent of federal district judges are women as is 28 percent of the federal judicial department, which includes magistrate and bankruptcy judges. In Indiana only one of the 10 federal district judges is a woman as are two of 10 magistrate judges. One of the district judges in Indiana is Hispanic, and none of the seven bankruptcy judges is a woman or minority.

**Minorities:** Statistics are not maintained as to the race or ethnicity of state court judges, but recent accounts report the number of minority judges at about 3.8 percent, mainly located in Lake and Marion counties. One federal district judge in Indiana is an ethnic minority.

- A. Indiana Judicial Center records.
- B. ABA Commission on Women in the Profession, Current Glance of Women in the Law 2001.
- C. New York State Judicial Committee on Women in the Courts, Women in the Courts: A Work in Progress, April 2002.
- D. National Center for State Courts report.
- E. "Few Women Lead Courts in Indiana," Indianapolis Star, August 19, 2002.
- F. Federal district court records.



# Makeup of the Profession Recommendations

## RECOMMENDATION ONE

**That the four law schools within Indiana be encouraged to continue their efforts in recruiting and retaining women and minority students through existing programs in connection with the judiciary and bar associations.**

**Purpose:** To continue efforts to encourage diversity in the legal professional which not only utilizes talents and experiences of various segments of society but will eventually counter perceptions of bias that undermine confidence in the legal system and judicial branch of government.

**Implementation:** Programs such as the Indiana Conference for Legal Education Opportunity (ICLEO), the American Bar Association's Judicial Division Standing Committee on Minorities in the Judiciary and special summer admissions programs have assisted law schools in their recruitment and retention efforts and have increased the number of minority, low-income and educationally disadvantaged students in the law schools. Cooperation between the judiciary, bar and academic institutions of this kind should be continued.

**Alternative:** The body charged with implementing these Recommendation could offer assistance in coordinating efforts of existing institutions and assist, if necessary, in recruiting additional personnel or students to participate in existing programs.

**Fiscal Impact:** Minimal.

## RECOMMENDATION TWO

**That further information be obtained from the law schools about their attempts to achieve proportionate representation in minority enrollments and graduation rates as well as proportional representation of women and minority faculty.**

**Purpose:** To discover the reason behind statistical disparities and determine whether additional strategies would assist existing efforts to provide equal opportunities for qualified women and minorities who wish to enter the legal profession and the legal academic community as well as providing role models for those entering the legal profession.

**Implementation:** Law schools should be encouraged to continue their present efforts, including recruiting at minority job fairs and cooperation with programs such as ICLEO; they should also be encouraged to seek the assistance of minority

bar associations, women's committees, etc., in seeking qualified applicants to law school and persons for adjunct or part-time faculty appointments. Additionally, a member of the entity charged with implementing the Recommendations should meet with appropriate persons at each of the four law schools to discuss apparent disparities and present recruiting and retention efforts.

**Alternatives:** The entity charged with overseeing implementation of these Recommendations could contact the deans of the law schools to see whether the information is available and whether the individual institutions would welcome any assistance from the entity in their recruitment, retention or review programs.

**Fiscal Impact:** Minimal.



## RECOMMENDATION THREE

**That further study be undertaken to explain and address the statistical disparities in the number of minority lawyers in law firms and what appears to be an under-representation of women at the partnership level. Regardless of the result of such a study, law firms, the judiciary and law schools should increase contacts between law firms and minorities**

**and law firms should be encouraged to review their recruitment, employment and evaluation practices for barriers to recruitment and retention of women and minorities.**

**Purpose:** To determine the reasons for the statistical disparities involving minority representation at all levels in law firms and the female representation at the partnership level and to determine what steps, if any, should be taken to address barriers to participation and to encourage an environment where law firms increase access for qualified women and minorities.

**Implementation:** First, a selection of a random but representative sample of law firms should be interviewed in depth by a subgroup of the entity charged with implementation of the Recommendations to ascertain reasons for the statistical disparity and to determine whether law firms are affirmatively seeking to employ minority attorneys and what measures are being taken to encourage their growth and success within the firms. Second, law firms should be encouraged (1) to review their recruitment, employment and evaluation practices for barriers to recruitment and retention of women and minorities and make revisions where warranted; and (2) to participate in minority job fairs and minority mentoring pro-

**To continue efforts to encourage diversity in the legal professional which not only utilizes talents and experiences of various segments of society but will eventually counter perceptions of bias that undermine confidence in the legal system and judicial branch of government.**

grams that will put them in contact with more qualified minority applicants. Third, the judiciary should (1) continue its involvement in ICLEO and minority recruitment and should consider seeking law firm participation in its minority recruitment efforts and (2) continue efforts to recruit and place minorities in judicial clerkships through such programs as the Judicial Clerkship Program of the ABA Commission on Racial and Ethnic Diversity and its Judicial Division because former judicial clerks often move on to positions in law firms.

**Alternatives:** Instead of having the law firms review their practices and make revisions on an ad hoc basis, the entity charged with implementation of the Recommendations could seek the assistance of the bar association's labor and employment committee in providing sample policies and, in conjunction with law school placement directors, offer a workshop on recruitment and retention of minorities and women in multiple venues. Attorneys who assist in this project could receive continuing legal education credit.

**Fiscal Impact:** Minimal; costs of workshop could be offset by attendance fees.

**RECOMMENDATION FOUR**

**That more comprehensive statistics be gathered or maintained to determine a more accurate picture of the demographic makeup of the legal profession and assist with future strategies for inclusion of women and minorities in the profession.**

**Purpose:** To provide a more accurate view of the demographic makeup of the legal profession in Indiana and to ascertain if additional steps should be taken to provide for appropriate opportunities for women and minorities.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should gather demographic statistics regarding employment of attorneys in government offices, including prosecutors and public defenders; that the Indiana Judicial Center and Clerk of Court maintain statistics on the race and ethnicity of judges and attorneys, and that one of the court administration offices maintain statistics on the gender, race and ethnicity of judicial clerks employed by the Supreme Court and Court of Appeals.

**Alternatives:** Instead of maintaining the statistics in perpetuity, the demographic statistics of attorneys, judges and law clerks could be kept for a year or two to allow interested parties to determine if the effort of keeping the statistics is worthwhile.

**Fiscal Impact:** Minimal.

**RECOMMENDATION FIVE**

**That surveys be developed to determine whether the statistical disparities involving the number of women in the judiciary and at partnership level in law firms is related to their time out of law school or other factors.**

**Purpose:** To determine if the statistical disparities that exist and may give rise to a perception of unfairness are traceable to years of involvement in the legal profession as opposed to other factors. If the disparities can be explained by years out of law school as opposed to other factors, then the perception can be addressed; if not, then other strategies may be warranted.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should contract with an independent survey organization such as the Indiana University Public Opinion Laboratory to develop a survey and strategy.

**Alternatives:** The entity charged with overseeing implementation of these Recommendations could attempt to develop a survey itself and send it to representative samples and attempt to interpret the data.

**Fiscal Impact:** Varies depending on the method chosen but neither would be high.

**RECOMMENDATION SIX**

**That law schools be encouraged to continue their efforts to recruit qualified minorities and women faculty with the goal of at least obtaining faculty representation reflecting the minority and female enrollment in their institutions.**

**Purpose:** To provide equal opportunities in the legal academic community for qualified women and minorities as well as providing role models for those entering the legal profession.

**Implementation:** Law schools should be encouraged to continue their present efforts, including recruiting at minority job fairs; they should also be encouraged to seek the assistance of minority bar associations, women's committees, etc., in seeking qualified persons for adjunct or part-time faculty appointments.

**Alternatives:** The entity charged with overseeing implementation of these Recommendations could contact the deans of the law schools to see if assistance in finding qualified persons would be welcome. If so, the entity could notify appropriate sources and coordinate efforts.

**Fiscal Impact:** Minimal.



## Language & Cultural Barriers Findings

The Language and Cultural Barriers Subcommittee examined issues of language and cultural barriers in the legal system, including issues that newcomers to the United States and persons with limited English proficiency face with law enforcement and the correctional system. The public hearings, surveys and focus groups revealed that judges, attorneys, court employees and court users were all aware of barriers to participation in the legal system traceable to language and/or cultural barriers. While many courts were attempting to reduce those barriers through use of interpreters, the present system can be improved. Early reports on the issues faced by those with limited English proficiency gave rise to Interim Recommendations regarding the use of interpreters in Indiana courts.

### POPULATION DATA

A growing number of Hoosiers speak languages other than English at home and report that they speak English less than “very well.” The 2000 U.S. Census reported that more than 362,000 persons over age 5 in Indiana or 6.4 percent of the population spoke languages other than English in their homes and 40 percent of them reported that they speak English less than well. Approximately half speak Spanish at home and 45 percent report that they speak English “less than well.” More than 186,000 residents of Indiana over age 5 or 3.1 percent of the population were born outside the U.S. and more than half entered the country after 1990. Moreover, while the total population of Indiana was projected to increase by about 8.2 percent between 2000 and 2025, the Hispanic population is expected to increase at a rate of approximately 73.6 percent.

- A. U.S. Census Bureau, QT-PL. Race, Hispanic or Latino, and Age: 2000, Indiana.
- B. U.S. Census Bureau, Table DP-2, Profile of Selected Social Characteristics: 2000, Indiana.
- C. U.S. Census Population Projections compiled in 1996, Projected State Populations by Sex, Race and Hispanic Origin, Series A.

### INTERPRETER USE

Judges throughout Indiana have used translation services for non-English speakers in the courtroom. Of the 247 judges who responded to a survey commissioned by the Commission on Racial and Gender Fairness, 90.3 percent reported having used translators for non-English speakers in their courtrooms with in past five years and 89.5 percent had used an interpreter in the past six months. Although 54.7 percent had used interpreters between one

and 10 times during that time period, 4.9 percent had used interpreters more than 100 times. Attorneys and court personnel surveyed confirmed the need for and use of interpreters.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See

Appendix A at 5.

- B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 5, 11-12, 18-19, 27-28, 34-35, and 38-39.



### LANGUAGE RANGE

By far the most common language where interpreters were required was Spanish with 84.6 percent of the judges reporting they

had used Spanish interpreters. Other languages where interpreters were used included Vietnamese (10.1 percent), Chinese (9.7 percent) and Russian (6.1 percent). Surveys of attorneys and court personnel revealed that courtroom interpreters also had been used for Polish, German, Japanese, Korean, Arabic, French, Greek, Ethiopian, Punjabi, Croatian, Serbian, Lithuanian, Macedonian, Czech, Thai, Burmese, Tongan and Rumanian.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 7.
- B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 5, 11-12, 18-19, 27-28, 34-35 and 38-39.

### PROFICIENCY PROBLEMS

Despite the use of interpreters in some judicial

proceedings, attorneys, court personnel and court users believe that persons who are not fluent in English are at a disadvantage in dealing with law enforcement personnel, the judicial system and the correctional system. They claim that non-English speakers are arrested disproportionately, are treated less favorably during at the pretrial stage and in court because of language and cultural differences and are rarely explained the consequences of plea bargains. Once in the correctional system, lack of English proficiency prevents full participation in rehabilitative programs. Newcomers to the United States who are not proficient in English are also victimized by persons who speak their language and provide incomplete or erroneous legal advice.

- A. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6 and 16.
- B. 2001 Community Forum Report. See Appendix D at 2-4.
- C. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 5 and 25.

#### **STANDARDS LACKING**

Although all agreed that interpreters must be fluent in English and the interpreted language to work in the courts, a majority of the judges surveyed (66.4 percent) indicated they lacked minimum standards to verify credentials. Such standards and procedures as exist lacked uniformity. Attorneys and others familiar with the courts expressed concern that interpreters misinterpreted testimony, paraphrased instead of translated or included inappropriate commentary instead of merely translating.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 7.
- B. 2001 Community Forum Report. See Appendix D at 2-4.
- C. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 38-39.
- D. Observations of Commission members.

#### **CURRENT PRACTICES**

While a few courts in Indiana have Spanish-language interpreters under contract and schedule hearings for Spanish-speaking defendants during regular courtroom hours when the interpreters are available, interpreter availability was an issue. Judges reported that they postpone proceedings until interpreters were available and have allowed family members, friends, bilingual counsel and court personnel to interpret. Courts have used outside

services, churches, police and a variety of agencies to provide interpreters. Anecdotal references suggest that smaller counties and languages other than Spanish present particular problems when interpreters are needed. Attorneys, court personnel and court users have expressed dissatisfaction with the current system even in larger counties, however, because of scheduling issues, competency and availability.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 7.
- B. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6, 16, 35 and 37.
- C. 2001 Community Forum Report. See Appendix D at 2-4.
- D. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 27-28.
- E. Observations of Commission members.

#### **DIFFERENT CONCERNS**

Cultural and status issues also appear to give rise to concerns involving non-citizens and other newcomers. For example, certain conduct that is acceptable or at least legal in other cultures may result in criminal charges or incarceration or other risks in the United States; socio-economic or cultural differences may put newcomers at a disadvantage in matters as diverse as bail and child welfare, and Indiana law enforcement and court personnel are often unaware and fail to comply with international treaties. Moreover, linguistic and cultural minorities often perceive that judges and law enforcement personnel lack knowledge of or are insensitive to their background and cultures.

- A. Zurick, Focus Group Research Report, September 2002. See Appendix C at 37.
- B. 2001 Community Forum Report. See Appendix D at 2-4.
- C. Observations of Commission members.

#### **OTHER JURISDICTIONS**

Twenty-five other states -- including Kentucky, Illinois and Michigan -- are members of the State Court Interpreter Certification Consortium, a program developed in 1995 administered by the National Center for State Courts. The Consortium develops court interpreter proficiency tests, makes the tests available to member states and regulates their use. The Consortium has developed 11 different tests for languages, including those most often encountered by the Indiana judiciary.

- A. FAQ for the Consortium for Court Interpreter Certification, National Center for State Courts.

# Language & Cultural Barriers Recommendations

## RECOMMENDATION ONE

That the Interim Recommendation regarding certified court interpreters forwarded to the Supreme Court in June 2002 and partly adopted by Order of August 30, 2002, [See Appendix E.] be fully implemented in order to allow Indiana residents who lack English proficiency to fully participate within the judicial system.

**Purpose:** Justice cannot be dispensed nor barriers to participation be lowered without all participants being able to communicate with one another. To the extent that lack of language proficiency prevents communication and fosters mistrust and misunderstanding, adoption of a certified interpreter program promotes the administration of justice and full access to the Indiana legal system.

**Implementation:** The Supreme Court, by ordering that Indiana join the State Court Interpreter Certification Consortium administered by the National Center of State Courts, has taken the first step toward implementing Recommendation One. Other preliminary steps toward implementation as set out in the Interim Recommendations [and Court action] include:

- instituting a certification program, initially for Spanish interpreters who would be used in cases where criminal defendants or civil litigants have a constitutional or statutory right to counsel [adopted];
- establishing a full-time presence in the Division of State Court Administration and an Advisory Board to oversee and implement court interpreter services [adopted];
- adopting a Code of Ethics for interpreters [approved in principle];
- adopting certification standards in keeping with those set out by the national Consortium [approved in principle; awaits Advisory Board participation];
- approving a standard pay scale for all certified interpreters [deferred pending further examination of fiscal concerns];
- adopting a centralized method of state funding of interpreter services so that trial courts can hire certified



interpreters or, alternatively, adoption of a partial reimbursement system similar to that used in providing counsel in death penalty cases [deferred pending further examination of fiscal concerns];

- establishing a mandatory training and orientation program for court interpreters [approved in principle; implementation depends on fiscal concerns];
- adopting the testing methods of the Consortium as set out in the Interim Recommendations [approved in principle; awaits Advisory Board participation];
- maintaining of a list of certified interpreters by the Division of State Court Administration [approved];
- encouraging the development of programs at post-secondary academic institutions within the state to prepare individuals to qualify as certified interpreters ["appears promising," but action awaits implementation of other Interim Recommendations].

Once a certification program is established and funding issues are resolved, the Commission urges that an order issue that only certified interpreters be used in languages where state certification is available to insure that only fully qualified interpreters are used.

**Alternative:** Although centralized state funding of interpreter services at the trial level is preferable, adoption of a partial reimbursement system for trial courts, similar to that used in providing counsel in death penalty cases, would be acceptable if necessary.

**Fiscal Impact:** Cost of interpreter services is unknown at present and dependent on level of use by trial courts, but may be significant. In contrast, costs of administration of the certification program would be relatively small and may be offset initially by startup grants with administrative costs eventually being covered in large part by licensure fees.

## RECOMMENDATION TWO

That procedures be established to monitor the use of all foreign-language interpreters within the judicial system



## Justice cannot be dispensed nor barriers to participation be lowered without all participants being able to communicate with one another

and that standards be adopted to govern the conduct of interpreters in judicial proceedings in order to assure professionalism and quality.

**Purpose:** Monitoring and record-keeping would provide information to be used to project future needs, prevent abuses and encourage consistency of proper practice among the trial courts throughout the state.

**Implementation:** The Division of State Court Administration should develop two standardized forms that would be provided to all trial courts in the state no later than June 2003. Within 30 days after the forms are received, trial courts should be required to keep track of every use of an interpreter at every proceeding on Form A and require that any interpreter who appears in a judicial proceeding complete and submit Form B. Form A will be used to record language interpreted, the type of proceeding, the number of hours and hourly rate paid. Form B will require the interpreter to list his or her qualifications, including any post-secondary education or formal training and experience. The completed forms will be submitted to the Division of State Court Administration quarterly and would eventually be kept by an Interpreter Program Office, should one be established.

Trial courts should maintain lists of interpreter panels and refrain from giving any one or two persons monopolies on interpreter contracts; the Division of State Court Administration or an Interpreter Program Office should supplement such lists periodically. The Division or Program Office should also serve as a repository for complaints concerning ethical violations by interpreters or other para-professional misconduct and shall inform appropriate authorities of such complaints.

All interpreters should be required, as a condition of working within the legal system, (1) to conduct themselves in accordance with the ethical standards set out in the Interim Recommendations, (2) to refrain from engaging in the unauthorized practice of law, (3) to refrain from recommending specific attorneys, bail bondsmen, etc. (4) to refrain from accepting payments from more than one source for services rendered and (5) to maintain confidentiality. Before participating in judicial proceedings, each interpreter shall take an oath that s/he is aware of the standards and agrees to abide by them.

**Alternatives:** Instead of universal implementation of data collection and use of Form A, a pilot program could be established whereby data would be collected from a representative sample of counties for a two-year period and then used during a future implementation phase to set standards that would be put in place for use throughout the state. Or implementa-

tion could be rolled out county-by-county either by the overall size of the county or by the percentage of foreign-born in each county as determined by Census Bureau figures.

**Fiscal impact:** Minimal.

### RECOMMENDATION THREE

That a system be developed whereby accurate, uniform information on the legal system can be readily provided to and accessed by persons who are not proficient in English. Information advising persons of their basic rights and responsibilities under Indiana and U.S. law should be developed and made accessible through the Web and in brochures translated into the 10 languages, other than English, used most commonly in Indiana. Brochures would be made available through public libraries, schools, churches and community centers; and court personnel, judges and law enforcement personnel would be encouraged to access the information contained on the Website and provide it to persons whose English proficiency is doubtful.

**Purpose:** Standardized information in languages other than English may address some of the misconceptions about the U.S. legal system to reduce perceptions of bias and encourage understanding and can be made readily available to a wide variety of persons through the use of technology.

**Implementation:** Two templates in English should be developed by the Commission or body charged with overseeing the implementation of these Recommendations in coordination with the Pro Se Advisory Committee, one addressing criminal law and one civil law including landlord/tenant, domestic relations and small claim practice. The templates should concisely, accurately and clearly address the basics of the U.S. legal system and individual rights and responsibilities. Those templates should be translated by professionals into the 10 languages, other than English, most commonly used in Indiana and made available on a Web page and in brochure form. Court personnel, judges and law enforcement should be encouraged to provide such information to persons whose English proficiency is doubtful; schools and government bodies should be encouraged to provide links to the Web page on their Web sites, and brochures containing either the actual information or referencing the availability of the information should be made available through public libraries, schools, churches and community centers.

**Alternatives:** Responsibility for implementing this Project could be assigned to some body other than that ultimately



charged with implementation of the Commission Recommendations. For example, implementation could be assigned to the Division of State Court Administration, merged with the mission of the Pro Se Advisory Commission or undertaken by private agencies such as a bar association committee or legal aid provider. Additionally, although it appears to be preferable to have the translations prepared simultaneously and provided as a package, translations could be done in order of use with the information be made available first in Spanish, then in Vietnamese, then, in Chinese, Russian, etc.

**Fiscal Impact:** Relatively minimal; because of the novelty and scope of this Recommendation, it is possible that grant money could be obtained to fund this Project.

#### **RECOMMENDATION FOUR**

**That law enforcement and prosecutors' offices in Indiana be encouraged to comply with international treaties regarding notification to foreign consulates when foreign nationals are arrested or detained.**

**Purpose:** To facilitate compliance with international law and provide appropriate assistance to persons unfamiliar with the U.S. legal system.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with

the Indiana Sheriff's Association and the Prosecuting Attorneys Council to insure that every sheriff and chief of police has a copy of the most recent version of the Consular Notification and Access booklet published by the U.S. Department of State and then coordinate training for sheriffs, police and prosecutors to insure compliance with consular access treaty obligations.

**Alternatives:** Instead of providing copies of the booklet, the body overseeing implementation of the Recommendations could alert appropriate entities of the availability of the document by furnishing the address and Website where copies can be obtained.

**Fiscal Impact:** Minimal.

#### **RECOMMENDATION FIVE**

**That attorneys involved in the criminal justice system be advised of the potential immigration consequences of arrest, detention and convictions so that they may better advise their clients and make more informed decisions when non-U.S. citizens have occasion to interact with the criminal justice system.**

**Purpose:** In order to reduce misconceptions and reduce perceptions of unfairness that arise when non-citizens are detained, arrested or convicted of crimes, both the attorneys who represent individuals and those who prosecute them

should be aware of the immigration consequences of such actions and the consequences that may flow from plea bargains. Defense attorneys, in particular, must be made aware of immigration consequences, so that they may more accurately advise their clients of the ramification of certain actions.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with the Prosecuting Attorneys Council, the Public Defender Council, the American Immigration Lawyers Association, the Indiana Continuing Legal Education Foundation and bar associations to provide training to prosecutors, criminal defense attorneys and others regarding the rights of non-citizens and the immigration consequences of criminal convictions.

**Alternatives:** Rather than coordinating training efforts, the entity charged with overseeing implementation of these Recommendations could alert the various organizations of the perceived need for such training and encourage it to occur.

**Fiscal Impact:** Minimal.

#### **RECOMMENDATION SIX**

That the Department of Correction be encouraged to institute language proficiency programs within the penal system and that legislation be adopted to allow persons with limited English proficiency who successfully complete such programs to obtain credit time in proportion to existing credit time programs linked to education.

**Purpose:** To the extent that educational programs in correctional facilities linked to credit time are intended to provide

inmates with skills that may lead to successful rehabilitation, English language proficiency would help provide skills that would increase understanding of the U.S. legal system and reduce recidivism.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with the Department of Correction to establish such programs, preferably with the inclusion of components which also expose the students to accurate information about their responsibilities under the U.S. and state legal system, and could support the passage of appropriate legislation to encourage such programs. The materials developed in Recommendation Three, *supra*, could assist in the information component of this Recommendation.

**Alternatives.** Rather than coordinating efforts, the entity charged with overseeing implementation of these Recommendations could alert the various organizations of the perceived need for such programs and encourage its fruition.

**Fiscal Impact:** Minimal.

#### **CONCURRENCES**

The Language and Cultural Barrier Subcommittee specifically concurs in Recommendations Two and Four of the Criminal and Juvenile Justice Subcommittee regarding a review and possible revision of bail criteria and educational programming.

## Interim Recommendations About Language

THE PEOPLE SPOKE...and the Commission on Race and Gender Fairness and the Supreme Court listened, taking the first steps to **tear down the language barrier** to participating in the legal system.

During the seven Community Forums in 2001, participants highlighted language issues as a barrier to participation. The problems faced by the growing number persons in Indiana with limited English skills who come in contact with the courts was echoed in surveys and focus groups. The Commission considered the issue of sufficient urgency to merit attention before the Findings and Recommendations contained in this Report were tendered and, therefore, proffered Interim Recommendations to the Supreme Court in June 2002.

Building on work done by the Consortium for State Court Interpreter Certification and other states, including Delaware, Minnesota, New Jersey, Oregon and Washington, the Commission devised a plan of action that was approved in part in August 2002. Indiana has now joined the Consortium and is devising a plan to meet the needs of the non-English speaking population through a certified interpreter program that will **provide quality and consistency** in fostering **understanding and communication** within the legal system and during judicial proceedings.



## Criminal & Juvenile Justice Findings

The Criminal and Juvenile Justice Subcommittee examined effects of race, ethnicity and gender in the criminal justice and correctional system. In doing so, the subcommittee focused on information reflecting perceptions gathered in public forums, surveys and focus groups, and on statistics kept by government agencies regarding the correctional system. Little demographic data, however, was available on the treatment of persons in the courts. The hearings, surveys and focus groups revealed that participants perceived that racial and ethnic minorities were treated more harshly in the criminal justice system than non-minorities and that women often received more favorable treatment than men, but few statistics exist to test those perceptions. Statistical disparities were found, however, in demographic information reflecting incarceration and probation.

### POPULATION DATA

The 2000 U.S. Census reported that more than 2,982,000 women live in Indiana making up 51 percent of the state's population. Approximately 774,000 residents (male and female) or 11.4 percent are racial minorities (black, American Indian, Asian, Pacific Islander) and more than 214,500 or 3.5 percent are Hispanic or Latino. More than 186,000 residents or 3.1 percent of the total population were foreign-born and more than half of them entered the United States between 1990 and 2000.

Approximately 77,500 of the foreign-born or 41.5 percent of those born outside the U.S. were born in Latin America.

Moreover, while the total population of Indiana was projected to increase by about 8.2 percent between 2000 and 2025, the Hispanic population is expected to increase at a rate of approximately 73.6 percent and the black population was expected to increase at a rate of 22.5 percent.

A. U.S. Census Bureau, QT-PL. Race, Hispanic or Latino, and Age: 2000, Indiana.

B. U.S. Census Bureau, Table DP-1, Profile of Selected Social Characteristics: 2000, Indiana.

C. U.S. Census Bureau, Table DP-2, Profile of Selected Social Characteristics: 2000, Indiana.

D. U.S. Census Population Projections compiled in 1996, Projected State Populations by Sex, Race and Hispanic Origin, Series A.

### CRIMINAL BEHAVIOR

Attorneys representing persons new to the United States report that many of their clients have been arrested or incarcerated in connection with behaviors that do not have penal consequences in the clients' countries of origin. Some of these behaviors include domestic battery, driving without a license or without insurance and public intoxication.

A. Observations of Commission members.

B. 2001 Community Forum Report. See Appendix D at 3.

### HARSHER TREATMENT

A perception exists with court employees, court users and attorneys that ethnic and racial minorities are treated more harshly by the criminal justice system in many respects

including arrests, bail, crimes charged and sentencing and that women are treated favorably by the system. Statistics are not maintained, however, as to the demographics of adult arrests, bail, charged crimes or sentencing that would allow testing of the perceptions. Demographic statistics are reported for juvenile proceedings, however, and showed that 27.2 percent of juvenile delinquency cases filed in 2001 involved African-Americans, 3.6 percent involved

Hispanics and 26.8 involved females.

A. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6, 7, 13, 16, 17, 19, 21, 22, 34, 35 and 36.

B. 2001 Community Forum Report. See Appendix D at 2-4.

C. Observations of Commissioners.

D. 2001 Indiana Judicial Service Report, Probation Report, Juvenile Delinquency filed cases.

E. Interviews in June 2002 with the Judicial Conference and Criminal Justice Institute.

### BAIL CRITERIA

Bail criteria, especially involving "length and character of residence," is thought to have a disparate impact on racial and ethnic minorities who because of socio-demographic and economic concerns are more likely to rent than own their residences. Anecdotal evidence suggests that minorities are often refused bail or, because of disparities in home ownership, bail is often set at higher levels for



minorities who are then held in custody because they are unable to afford bail.

A. Zurick, Focus Group Research Report, September 2002.

See Appendix C at 3.

B. Observations of Commissioners.

#### PRISON POPULATIONS

Within the correctional system, both nationally and within Indiana, African-American adults are incarcerated in the prisons and jails disproportionately to their population figures. For example, in December 1997, the last date for which U.S. Dept. of Justice statistics were available, more than 590,000 of the more than 1.2 million prisoners under state or federal jurisdiction or 47.6 percent were African-American but African-Americans they made up only 7.7 percent of the general population. Similarly, 35.7 percent of inmates in jails nationally in June 1999, the last date for which U.S. Dept. of Justice statistics were available, were African-American. During those same time periods, in Indiana, 43 percent of the almost 18,000 persons imprisoned in state institutions were African-American and 24.3 percent of the 12,787 inmates in jails within Indiana were African-American despite that community constituting only 8.8 percent of the state's population during the 2000 Census.

A. Bureau of Justice Statistics, Correctional Populations of the United States, 1997, reported in May 2001, Table 5.6.

B. Bureau of Justice Statistics, Census of Jails, 1999, Appendix Table 9.

C. U.S. Census Bureau, Profile of General Demographic Characteristics, 2000, Table DP-1.

#### PROBATION QUESTIONS

Perceptions exist that males who are racial and ethnic minorities receive probation less frequently than similarly situated male Caucasians or females. National statistics showed that, in December 1997, African-Americans made up 49 percent of adult prisoners but were only 34 percent of adults on probation. Similar perceptions of disparate treatment were expressed as to sentences and charged offenses as well. While Indiana statistics were not available on either issue, Department of Correction statistics for July 2002 showed that African-Americans made up 56 percent of those serving sentences for Class A felonies; 44 percent for Class B felonies, 35 percent for Class C felonies and 31 percent for Class D felonies.

A. 2001 Community Forum Report. See Appendix D at 4.

B. Observations by Commissioners.

C. Bureau of Justice Statistics, Probation in 1997, reported in

May 2001, Table 3.8 Adults on probation by race.

D. Bureau of Justice Statistics, Correctional Populations in the United States, 1997, reported in May 2001, at pp. iii & iv

E. Indiana Department of Corrections data.

#### DRUG-RELATED OFFENSES

One of the common issues raised in focus groups was that the sentencing structure and offense classification system over-classified drug-related offenses and resulted in disproportionate incarceration of minorities and females.

Though statistics were not available on this precise issue, the statistics that do exist reveal that the percentage of African-Americans increases with the classification of the committing offense. For example, 56 percent of those in Dept. of Correction custody in July 2002 were serving sentences for Class A felonies; 44 percent for Class B felonies, 35 percent for Class C felonies and 31 percent for Class D felonies. Approximately 20.4 percent of all committing offenses in 2001, regardless of class, involved drug offenses. Moreover, 28.4 percent of females in DOC custody in 2001 were serving time for drug offenses. And the most common felony classification for all offenders was Class B felonies, the most common offense being Dealing in Cocaine or Narcotic Drugs.

A. Zurick, Focus Group Research Report, September 2002.

See Appendix C at 6, 8, 19, 20, 21, 27, 33 and 35.

B. Indiana Department of Correction, Annual Report 2001, pp. 16-17.

C. Indiana Department of Correction data.

#### POST-SENTENCING ISSUES

Questions also arose regarding how racial and ethnic minorities were treated post-sentencing. Common issues had to do with assignment within institutions, especially because assignments and classification affect credit-classifications and release dates; the racial and ethnic makeup of correctional officers, and probation. Demographic statistics were not available as to assignments and classification once imprisoned. Statistics for July 2002 revealed that, although 39.2 percent of the inmates were African-American, only 16.5 percent of the correctional officers were. Similarly, where 2.8 percent of the inmates were Hispanic, only 1.2 percent of the correctional officers were.

A. 2001 Community Forum Report. See Appendix D at 4.

B. Observations by Commissioners.

C. Indiana Department of Correction data.

D. Zurick, Focus Group Research Report, September 2002. See Appendix C at 8, 11, 15, 22

## Criminal & Juvenile Justice Recommendations

### RECOMMENDATION ONE

That a Blue Ribbon Panel be convened with representation from all branches and levels of government, ethnic and racial communities, including academics, law enforcement and medical and mental health professionals to review the sentencing structure and offense classifications that appear to have a disparate impact on ethnic minorities and females. The Panel should consider whether changes in the current system are warranted and, if so, should suggest modifications in the classification of offenses and range of sentences that could result in possible legislation in 2004.

**Purpose:** To respond to a widely voiced concern by participants of surveys, focus groups and public forums that the current system of classifying criminal offenses over-classifies and over-sentences drug offenses, as compared for example to crimes involving bodily injury, and has a devastating impact on women and minorities as well as undermining confidence in the judicial system.

**Implementation:** The Blue Ribbon Panel should be convened early in 2003 and charged with reporting their findings and conclusions to the entity charged with implementing these Recommendations by year end. The Panel or implementation panel should consult with both correctional personnel and legislators to determine if changes are warranted and feasible.

**Alternatives:** Delay convening the Blue Ribbon Panel until at least preliminary data is received from the data collection project referred to in Recommendation Five.

**Fiscal impact:** Minimal; revision of offense classifications and sentencing ranges would ultimately result in cost savings for the State.

### RECOMMENDATION TWO

That bail criteria be reviewed for factors that unnecessarily burden racial and ethnic minorities. To the extent that the current system inadvertently places minorities at a disadvantage because of cultural or socioeconomic factors unrelated to the purpose of bail, changes to the legislative criteria or the manner in which they are applied should be proposed. To the extent that the burdensome factors are determined to

be related to the purposes of bail, those factors in particular need to be better explained to the general public.

**Purpose:** To reduce unnecessary burdens that create inequities in the criminal justice system and fuel resentment and perceptions of bias. If such inequities exist and are unrelated to public safety and appearance at trial, modification of the actual statute or its application would reduce perceptions of unfairness and have practical benefits both for defendants and their families and for law enforcement struggling with the need to house pre-trial detainees.

**Implementation:** First, further study is warranted to determine how judicial officers and/or bail commissioners are interpreting the statutory criteria. A survey should be made of

courts within the 10 counties in Indiana showing the highest number of minorities in the 2000 Census as to how the statutory criteria for bail are interpreted. Any inconsistencies that arise between or within counties, especially criteria related to housing and source of funds, should be addressed to counter suggestions of unfairness. To the extent concerns about disparate impact on minorities can be addressed without eroding the purpose of the statutory criteria, judicial officers and bail commissioners should be encouraged to reduce the burdens through

application and interpretation of the criteria. To the extent statutory changes are deemed warranted or necessary, the entity charged with implementing these recommendations should consult with legislative sources to determine what changes, if any, are feasible. The survey should be undertaken in 2003 with recommendations as to application made within the year and legislative changes, if any, proposed in time to find sponsorship for 2004.

**Alternatives:** Responsibility for implementing this project could be assigned to some body other than that ultimately charged with implementation of the Commission Recommendations. For example, implementation could be assigned to the Division of State Court Administration or assistance from academic institutions or bar associations could be sought. Also, the number of counties surveyed could be expanded or contracted. Implementation of this recommendation could be postponed until at least preliminary data is received from the data collection project





**Attorneys representing persons new to the United States report that many of their clients have been arrested or incarcerated in connection with behaviors that do not have penal consequences in their countries of origin.**

referred to in Recommendation Five.

**Fiscal Impact:** Relatively minimal; adoption of changes would ultimately result in cost-savings for counties.

**RECOMMENDATION THREE**

**That bar associations, prosecutors, public defenders and law enforcement be encouraged to educate the public about the difference between the functions of the judiciary, attorneys and law enforcement in the criminal justice system.**

**Purpose:** To combat misperceptions that exist outside the legal community as to the roles of persons within the criminal justice system and reduce confusion and hostility that stem from those misconceptions.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with the Indiana Sheriff's Association and the Prosecuting Attorneys Council, Public Defender Council and bar associations to create educational programs and brochures that would be offered to and distributed in schools, libraries, community centers and courthouses that explain the differences in roles and separate functions carried out by those in the criminal justice system.

**Alternatives:** Instead of immediately pursuing this on a statewide basis, the programs and brochures could first be introduced in more populated counties where local bar associations are active and then reassessed for effectiveness.

**Fiscal Impact:** Minimal and grants might be available to underwrite the costs.

**RECOMMENDATION FOUR**

**That educators, attorneys and others with ties to ethnic and immigrant communities be encouraged to develop curricula that can be used in middle schools, churches, community centers and English as a Second Language classes that would inform newcomers to the United States of cultural differences and behaviors that are tolerated in countries of origins, such as domestic battery, driving without a license or without insurance and public intoxication, may lead to penal consequences here.**

**PURPOSE:** To alert cultural minorities to behaviors that have criminal consequences within the United States before they violate the law and have negative interactions with the criminal justice system. By alerting newcomers to these risks, they

may avoid behaviors which bring them in contact with the legal system or at least may better understand the consequences of their actions. Education may thus reduce misconceptions and reduce perceptions of unfairness.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with educators, attorneys, bar associations and others with ties to the ethnic and immigrant communities to develop and present educational programs in schools, libraries, community centers and churches regarding cultural differences and behaviors that carry penal consequences here. Attorneys who assist with such programs could receive credit against pro bono service requirements for their participation.

**Alternatives:** Rather than coordinating training efforts, the entity charged with overseeing implementation of these Recommendations could alert the various organizations of the perceived need for such curricula and encourage it to occur or implement it on a pilot basis in counties with concentration of recent ethnic minorities.

**Fiscal Impact:** Minimal and grants may help defray any costs.

**RECOMMENDATION FIVE**

**That trial courts throughout Indiana presiding over criminal proceedings be ordered to keep (1) statistics of the race, gender and ethnicity of criminal defendants, the offense(s) charged and the amount of bail, if any, and (2) statistics of the race, gender and ethnicity of persons convicted of crimes, the offense(s) on which they were found guilty, the results of any plea bargain and sentence or probation, if any. These statistics should be submitted quarterly to the Office of State Court Administration beginning in July 2003.**

**Purpose:** To provide an objective basis to measure the legitimacy of the perception of bias that was expressed by participants of surveys and focus groups. While perceptions of bias can be addressed through education and training programs, actual bias may require other strategies. Statistics would reveal whether reported perceptions are reflected in actual disparities and would assist in the development of programs or systemic changes necessary to address concerns.

**Implementation:** Statistics should be compiled and reported much like trial courts currently monitor race and gender in juvenile proceedings by submitting data to the Office of State

**To the extent that perceptions of disparate treatment adversely reflect on the criminal justice system in general and erode confidence in the judiciary, it is important to determine if the issues to be addressed are related to perception or actual disparities.**

Court Administration. Members of the Commission or implementing body familiar with criminal proceedings can work with the State Court Administrator in devising methods to collect the data. The implementing body should monitor the statistics for the purpose of devising a strategy to address this issue in 2004. Consideration should be given to alerting collegiate departments of criminal justice and schools of law that such data is being collected as the academic community may be of assistance in working with the collected data.

Attorneys could also be recruited to assist with analyzing the statistics and receive credit against pro bono service requirements for their efforts.

**Alternative:** Statistics could be gathered for a definite period of time or within designated geographic areas instead of statewide to provide a representative sampling of Indiana practice. The perception of different treatment within the criminal justice system seems pervasive and significant enough, however, to warrant a broad and long-term investigation. Instead of gathering the statistics independently and prospectively, information that already exists in presentencing investigation (PSI) files for a designated time-period could be collected and analyzed if statutory confidentiality concerns could be worked out. If the PSI route were taken, data could be reported within a much shorter period of time with less toll on the courts. Attorneys could also be recruited to assist with analyzing the statistics and receive credit against pro bono service requirements for their efforts.

**Fiscal Impact:** Minimal at this stage.

#### **RECOMMENDATION SIX**

**That the Department of Correction be encouraged to keep or report demographic statistics regarding assignments within the correctional institutions and classifications in order to allow a review of such assignments.**

**Purpose:** To the extent that perceptions of disparate treatment post-sentencing adversely reflect on the criminal justice system in general and erode confidence in the judiciary, it is important to determine if the issues to be addressed are related to perception or actual disparities. Statistics would reveal whether the reported perceptions are reflected in actual disparities and would assist those developing plans to address perceptions of unfairness.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with Department of Correction to assess data collected and then monitor the statistics for the purpose of devising a strategy to address any appropriate issue in 2004.

**Alternatives:** This study could be delayed until Recommendations more directly aligned with the judiciary are implemented.

**Fiscal Impact:** Minimal.

#### **RECOMMENDATION SEVEN**

**That the Department of Correction be encouraged to step up its efforts to recruit and retain more ethnic and racial minorities to work within the prison system so as to reduce perceptions of unequal treatment within the criminal justice system.**

**Purpose:** To the extent that perceptions of discrimination post-sentencing adversely reflect on the criminal justice system in general and erode confidence in the judiciary, the composition of correctional personnel plays a part. To the extent that the increased presence of minority correction officials would reduce misunderstandings and perceptions of unfairness, the whole criminal justice system would ultimately benefit.

**Implementation:** The entity charged with overseeing implementation of these Recommendations should coordinate with Department of Correction and offer assistance in recruiting and retaining a more diverse workforce within the prisons.

**Alternatives:** This program could be delayed until Recommendations more directly aligned with the judiciary are implemented.

**Fiscal Impact:** Minimal.

#### **CONCURRENCES**

The Criminal and Juvenile Justice Subcommittee specifically concurs in Recommendations Four, Five and Six of the Language and Cultural Barriers Subcommittee regarding information about U.S. law, educational programming and consular notification.

**While perceptions of bias can be addressed through education and training programs, actual bias may require other strategies.**





## Civil, Domestic & Family Law Findings

The Civil, Domestic and Family Law Subcommittee focused on issues of race, ethnicity and gender in the context of civil, domestic and family law. The subcommittee examined perceptions regarding the treatment of women and minorities in such areas as custody and visitation, property division, support and enforcement and domestic violence. While participants in the surveys and focus groups perceived that gender was a significant factor in decisions, statistics were not available to test those perceptions. Similarly, the subcommittee discovered a perception that women and minorities were more likely to be excluded from juries than non-minorities or males, but no hard data was available on the issue.

### CASE RESULTS

A perception exists among attorneys, court users and judges that gender influences the results in certain civil and family law proceedings. Specifically, many believe that women receive more favorable treatment in child custody cases, child support cases, and protective order proceedings. Another perception is that homosexuality may be a liability in family law and protective order proceedings.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 20.
- B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 9-10, 14-15, 23-24, 35-36, 45-46.
- C. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6, 16, 18, 19, 24, 26, 27, 29, 33 and 36.

### SUPPORT NETWORKS

A perception exists that women victims of domestic violence have a network of support services while no comparable support network exists for men and that courts consider men as less desirable custodial caregivers in cases of child custody.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 19-20.
- B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 9-10, 14-15, 35-36 and 45-46.
- C. Zurick, Focus Group Research Report, September 2002. See Appendix C at 6 and 16.

### DATA COLLECTION

Neither the courts nor executive agencies in Indiana are collecting data or tracking the role of gender, race or ethnicity in judicial decisions involving child custody cases, child support cases, and protective order cases.

- A. Interviews with the Judicial Conference, State Court Administrator's Office and sampling of courts.



### JURY COMPOSITION

A perception exists in some quarters that women and minorities may be excluded from juries based on their race or gender. A minority of attorneys and court personnel held that perception and fewer had observed the phenomena than believed it occurred. No objective data as to the demographic makeup of jury venires, the

demographic makeup of juries or the demography of challenges, however, was available.

- A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 12, 19-20 and 39-41.
- B. Interviews with the Judicial Conference, State Court Administrator's Office and sampling of courts.

### PERCEPTION DISPARITIES

An earlier study in Indiana and studies in other jurisdictions, however, reveal that racial and ethnic minorities have less trust in the fairness of the jury system than others. Although both blacks and whites surveyed in Indiana overwhelmingly agreed there should be a jury system, African-Americans were slightly less supportive (84.7 percent) than the general population (91 percent). Moreover, in 2000, for example, more than a third of the African-Americans surveyed agreed that the current system of

A perception exists in some quarters that **women and minorities** may be **excluded** from juries based on their **race or gender**.

selecting jurors resulted in the exclusion of blacks and Hispanics as compared to 22 percent of whites surveyed. Similarly, in a national survey in 1999, 71 percent of African Americans and 66 percent of Hispanics stated that juries were not representative of the community while whites surveyed were evenly divided on the question.

- A. Citizens Comm'n for the Future of Indiana Courts and the Judicial Administration Committee of the Indiana Judicial Conference, Juries for the 21st Century Vol. II, January 2000.
- B. National Center for State Courts, How Public Views State Courts, 1999.



## Civil, Domestic & Family Law Recommendations

### RECOMMENDATION ONE

That trial courts and prosecutors work with victims assistance advocates to put together comprehensive referral lists of groups and programs available to help victims of violence irrespective of gender or sexual orientation and make such lists available through courts, hospitals and law enforcement agencies. The information should be available in English and Spanish and any other languages represented in significant numbers in areas of distribution.

**Purpose:** To provide victims of violence, regardless of gender or sexual orientation, information about

groups or programs that may assist them and to reduce perceptions of bias or unfairness.

**Implementation:** The entity charged with implementing these Recommendations should coordinate efforts between representatives of the Indiana Coalition Against Domestic Violence, the Judicial Conference and the Prosecuting Attorneys Council to develop a template for such a brochure and referral list to be provided to local officials and judiciary and encourage that such a list and brochure be developed in each locality and made available through courts, hospitals and law enforcement agencies.

**Alternative:** Camera-ready or digital copies of such brochures could be prepared with space available for local contacts and provided to localities or be posted on appropriate Websites.

**Fiscal Impact:** Minimal; costs could be offset by grants.

### RECOMMENDATION TWO

That trial courts presiding over family law and protective order cases be ordered to keep statistics of the race and gender of the parties and the results of the proceedings in disputed child custody cases, disputed child support cases and protective order cases for a two-year period beginning in June 2003 and submit those statistics to the Division of State Court Administration quarterly.

**Purpose:** To provide an objective basis to measure the legitimacy of the perception of bias that was expressed by participants of surveys and focus groups. While perceptions of bias can be addressed through education and training programs, actual bias may require other strategies. Statistics would reveal whether reported perceptions are reflected in actual

disparities and would assist in the development of programs or systemic changes necessary to address concerns.

**Implementation:** Statistics could be gathered for two years within representative counties across Indiana and reported much like trial courts currently monitor race and gender in juvenile proceedings by submitting data to the Division of State Court Administration to provide a database for further study. Members of the Commission or implementing body familiar with the domestic relations practice can work with the Administration Office to devise methods to collect the

data. The implementing body should monitor the statistics for the purpose of devising a strategy to address this issue.

Consideration should be given to alerting academic institutions that such data is being collected as the academic community may be of assistance in working with the collected data. Attorneys could also be recruited to assist with analyzing the statistics and receive credit against pro bono service requirements for their efforts.

**Alternative:** Statistics could be gathered for a different period of time or in various numbers of counties to provide a representative sampling of Indiana practice.

**Fiscal Impact:** Minimal.

### RECOMMENDATION THREE

That trial courts presiding over civil jury cases be ordered to keep statistics of the race and gender of prospective jurors and the race and gender of jurors selected for a designated number of civil jury trials for a two-year period beginning in June 2003 and submit those statistics to the Division of State Court Administration quarterly.

**Purpose:** To provide an objective basis to measure the legitimacy of the perception of disparate treatment in jury selection. While perceptions of bias can be addressed through education and training programs, actual bias may require other strategies. Statistics would reveal whether reported perceptions are reflected in actual disparities and would assist in the development of programs or systemic changes necessary to address concerns.

**Implementation:** Statistics could be gathered for two years within representative counties across Indiana and reported much like trial courts currently monitor race and gender in





juvenile proceedings by submitting data to the Division of State Court Administration to provide a database for further study. Members of the Commission or implementing body familiar with civil proceedings can work with the State Court Administration in devising methods to collect the data. The implementing body should monitor the statistics for the purpose of determining whether further study or action is warranted. Attorneys could be recruited to assist

with analyzing the statistics and receive credit against pro bono service requirements for their efforts. Data would be shared with those monitoring upcoming changes in jury selection and treatment.

**Alternative:** Statistics could be gathered for a different period of time or in various numbers of counties to provide a representative sampling of Indiana practice.

**Fiscal Impact:** Minimal.





## Employment Findings

The Employment Subcommittee focused its attention on two areas: (1) the recruitment and retention practices used by the employers in the judicial system and (2) the current demographics of the employees in the judicial system. The research reflects that there is virtually no information available regarding the recruitment and retention practices of the employers in the judicial system. The survey of Indiana court employees and the survey of Indiana judicial officers provide some statistical data and shed some light on the perceptions held by court employees and their employers. With respect to court employee demographics, the survey of Indiana court employees and statistics maintained by certain State and judicial agencies provides some information on the gender of the employees in the judicial system.

### STATISTICAL SHOWINGS

Even though statistics on employment within the judicial system are incomplete, it is clear that both women and minorities are employed within the state judicial system. What cannot be determined readily is their numbers. It appears, however, that women are employed more often than racial and ethnic minorities. The statistics that were available showed.

**Judges:** Slightly more than 15 percent of the judges in Indiana are women.

Although formal statistics are not kept, the number of minority judges has been reported at approximately 3.8 percent.

**Magistrates/Commissioners:**

Approximately 35 percent of the magistrates and commissioners employed by the state courts are women.

**Probation Officers:** Women hold approximately 45.7 percent of the chief probation officer positions in the state; 40 percent of the assistant probation officer positions; 43.1 of the supervising probation officer positions; and 61 percent of probation officer positions.

**Other Employment:** State court judges who responded to a recent survey reported that almost 75 percent of the arbitrators, special masters, receivers, mediators and court-appointed experts they had hired or appointed were white males and the same percentage of secretaries, courtroom deputies and court reporters were women. Approximately 70 percent of the law clerks and interns were women and 24.6 percent were minorities.

Centralized, comprehensive statistics are not maintained, however, as to (1) the race or ethnicity of magistrates, commissioners and probation officers and (2) the gender, race and ethnicity of other court employees. Moreover, demographic statistics are not maintained as to appellate and Supreme Court clerks.

A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana

Judicial Officers' Perceptions of Race and Gender Fairness in the Courts, May 2002. See Appendix A at 8-11.

B. Indiana Judicial Center records.

C. "Few Women Lead Courts in Indiana," The Indianapolis Star, August 19, 2002.

### POLICIES AND PRACTICE

Employment policies and practices in state courts appear to be at the discretion of the individual judges with little attempt to standardize policies or practices. In some counties, courts have adopted county or city personnel policies and, in others, courts within the county have attempted to coordinate efforts; but it appears that many courts lack policies other than those required by federal civil rights and wage and hour laws.

A. Interviews with representative of State Court Administrator.

B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 15-16.

### GENERAL PERCEPTIONS

Although some court employees participating in focus groups and surveys expressed some concerns about the general fairness issues in the courts, an overwhelming number of those surveyed -- 95 percent -- report that they are treated fairly by their judicial employers without regard to gender, race or ethnicity. The vast majority of judges responding to the survey reported that they made their hiring decisions based on reputation, personal experience or prior work experience of applicants and rated gender, race and ethnicity as unimportant.

A. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Indiana Judicial Officers' Perceptions of Race and Gender Fairness in



the Courts, May 2002. See Appendix A at 8-11.

B. Cohenour, Vargus, Hutcherson, O'Brien and Riddles, Court Participants' Perceptions of Race and Gender Fairness in the Courts, September 2002. See Appendix B at 15-16.

C. Zurick, Focus Group Research Report, September 2002. See Appendix C at 13-18.

#### **DATA COLLECTION**

No agency or arm of the state judiciary appears to be collecting demographic data relating to recruitment and retention practices of employers within the Indiana judicial system.

A. Interviews conducted during the Summer of 2002.



## Employment Recommendations

### RECOMMENDATION ONE

That trial court administrators be ordered to keep (1) statistics of the race, gender and ethnicity of all applicants and new hires as well as those who terminate employment, (2) statistics of the race, gender and ethnicity of any court-appointed arbitrators, special masters, receivers, mediators and experts and (3) statistics of the race, gender and ethnicity of persons employed by the courts as of February 1, 2002. These statistics should be submitted quarterly to the Office of State Court Administration beginning in September 2003.

**Purpose:** To provide an objective basis to determine whether demographic disparities exist within the judicial employment and appointment practices that warrant further study or other action.

**Implementation:** Statistics should be compiled and reported much like trial courts currently report gender of probation officers, magistrates and commissioners by submitting data to the Office of State Court Administration. Members of the Commission or implementing body can work with the State Court Administration in devising methods to collect the data. A subcommittee of the body charged with implementing the Recommendations, including one current or former judicial officer, should review the statistics for the purpose of determining what further action, if any is warranted and should report on its Recommendations no later than December 2004.

**Alternative:** Statistics could be gathered for a definite period of time or within designated geographic areas instead of statewide to provide a representative sampling of Indiana practice.

**Fiscal Impact:** Minimal at this stage.

### RECOMMENDATION TWO

That judges and court administrators develop and use a standard set of employment practices -- including policies for recruiting, interviews, evaluations, discipline and salaries.

**Purpose:** To promote fair and standard practices to recruit and retain qualified employees and reduce disparity of treatment that can develop in the absence of standard policies and to eliminate misunderstandings concerning personnel policies that can adversely affect morale and employee productivity.

**Implementation:** Court administrators and judges, in cooperation with the State Court Administrators Office, should develop standard employment policies addressing recruiting, skill and qualification assessment, interviewing, salary scales, orientation and performance evaluations to adopt on a statewide basis. The entity charged with implementing these Recommendations could assist in these efforts by providing advice from current or former judicial employers. Judicial employers should then become trained and familiar with the standard policies and implement them in their courts, including educating employees about their contents.

**Alternatives:** Instead of implementing a single standard for all courts in the state, policies could be standardized by county or region to reflect differences in market.

**Fiscal impact:** Minimal. Improved personnel practices would eventually have a positive fiscal impact as they would reduce litigation costs and improve morale and reduce turnover.

## Future Focus Could Change

WHILE ENGAGED IN A REVIEW of the final draft of this Report and Recommendations, Commission members observed that their much of the work to date had focused upon racial and ethnic bias in the Indiana justice system. Some members voiced concern that such focus might be construed as reflecting a lack of interest by the Commission in addressing gender bias issues that were revealed in surveys, focus groups and other means. No lack of interest was intended.

Early Commission action and the Interim Recommendations were **inspired** by concerns voiced by citizens discussing ethnicity and language-related issues at public forums conducted early in the project. Commission members **listened to** and then **addressed problems** of persons who appeared to lack adequate political and social means of rectifying their situations.

The Commission did not intend to ignore, or in any way diminish, the relatively complex issues of gender bias which continue to exist within the system of justice and its related professions. As the Commission continues its work and explores other issues more fully, its members anticipate hearing more from those who continue to experience gender bias and will attempt to address their concerns.

# A

## APPENDIX



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## The Public Opinion Laboratory

# Indiana Judicial Officers' Perceptions of Race and Gender Fairness in the Courts

### Results of a Statewide Mail Survey of Indiana Judicial Officers

Presented to Myra Selby,  
Indiana Supreme Court Commission on Race and Gender Fairness

By  
Cassidy Cohenour, Brian Vargus, Andy Hutcherson,  
Brienne O'Brien, and Eric Riddles

May 2002



**Indiana University - Purdue University, Indianapolis**

## EXECUTIVE SUMMARY

- The Indiana Supreme Court Commission on Race and Gender Fairness commissioned the Indiana University Public Opinion Laboratory to conduct a survey of judicial officers in Indiana to assess issues related to racial, ethnic, and gender discrimination in the Indiana courts.
- The Public Opinion Laboratory sent questionnaires to 398 Indiana judicial officers. After several contacts and reminders, 247 judicial officers returned completed questionnaires.
- Of these 247, 92.3% identified themselves as Caucasian; 2.8% identified as African American. There were also two Latino respondents, one Asian American, and one Native American. Eighty percent of respondents were male.
- Ninety percent of judicial officers surveyed had used an interpreter in their courtroom in the past five years. Ninety-five percent of respondents had never refused a request for an interpreter, but 30% had been unable to obtain an interpreter when one was needed.
- Eighty-four percent of respondents believe that courts in their county are fair regardless of gender or ethnicity factors.
- Eighty-three percent of respondents believe they have been treated with the same respect as colleagues of another race or ethnicity; 75.3% believe they have been treated with the same respect as colleagues of another gender.
- Attorneys were the court participants most often observed demeaning or disparaging others in court on the basis of race or gender.
- A majority of judicial officers surveyed do not believe that the gender of the litigants affects the outcome of child support, custody, or marital property division cases.
- A majority (70%) of respondents had observed a judicial proceeding in Indiana of which they felt the outcome was unjust. However, only 14.5% of these respondents believed the injustice was due primarily to racial or gender bias.
- For many items in the survey, female judicial officers and members of minority racial or ethnic groups were more likely than males and non-minority members to observe gender and race based unfairness in the courts.
- Race and gender were very rarely considered important factors in hiring decisions. Factors such as prior work experience and personality were most commonly considered important.
- Overall, the judicial officers surveyed did not perceive a significant problem with race and gender unfairness in the Indiana courts. The most common closing comment read, "I've had no problems with the issues discussed."

## Introduction

The Indiana Supreme Court Commission on Race and Gender Fairness contacted the Indiana University Public Opinion Laboratory in the spring of 2001 regarding prospective research on race, ethnic, and gender fairness in the Indiana Court system. The first study to be performed was a survey of judicial officers from throughout the state of Indiana. The survey was to assess judicial officers' perceptions of the prevalence of racial, ethnic, and gender inequality in the Indiana courts. Specific issues to be addressed included the following:

- Efficacy of translation services for non-English speaking litigants
- Racial and gender discrimination in Indiana courts' hiring processes
- Race-based and gender-based harassment in court

To assess these issues, the professional staff of the Public Opinion Laboratory prepared a questionnaire, reprinted here in Appendix B. After consultation with and final approval from the Commission, questionnaires were mailed to 398 current Indiana state judicial officers and justices. We received completed questionnaires from 247 respondents, yielding a response rate of 62.1%. This response rate is good for a mail survey, particularly considering the length of the questionnaire, and lends credibility to the data collected. See Appendix B for a full description of the methodology of this study.

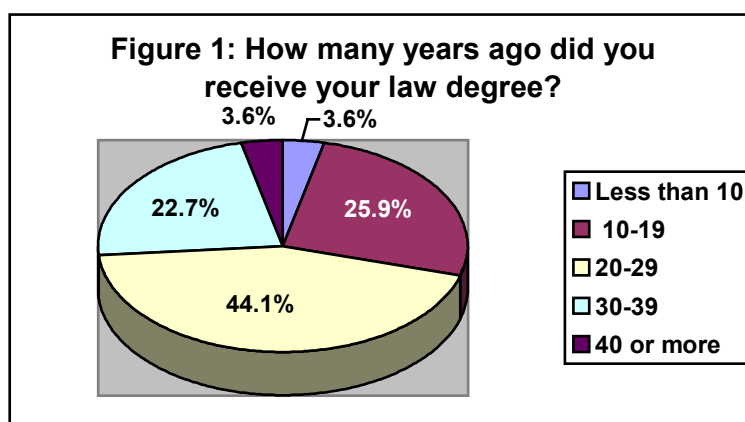
## The Sample

Before proceeding to a discussion of the findings, it is important to understand the demographics of the sample. Eighty percent of the 247 respondents were male; 17% were female, and 3% chose not to disclose their gender. The sample was overwhelmingly Caucasian (92.3%); however, there were seven African-American respondents, two Hispanic or Latino, one Asian American or Pacific Islander, and one Native American. Eight respondents did not indicate their race or ethnicity. The ages of respondents ranged from 32 to 76; the median age was 53<sup>1</sup>.

The first few questions in the survey addressed the judicial background of the respondent. First, we asked how long ago the respondent received his or her J.D. Although a J.D. is not a requirement for Indiana's elected judges, all judicial officers surveyed reported that they held a J.D. The most common responses, indicated by 44.1% of respondents, were in the category of 20 to 29 years ago.

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<sup>1</sup> The Public Opinion Laboratory attempted to obtain demographic information on the entire Indiana judiciary for comparison, but we were not able to find a source for this information.



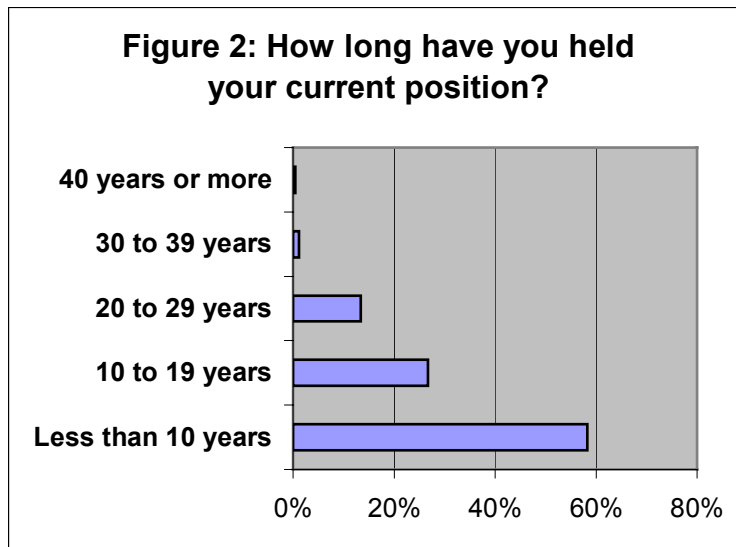
We also asked what specific judicial position the respondent currently holds. The most common response was “judge,” selected by 44.1% of respondents. Other common responses include “Superior Court judge” (22.3%) and “Circuit Court judge” (17.4%). The table below shows the most common current positions. Full data are available in Appendix C.

**Table 1: What is your current judiciary position?**

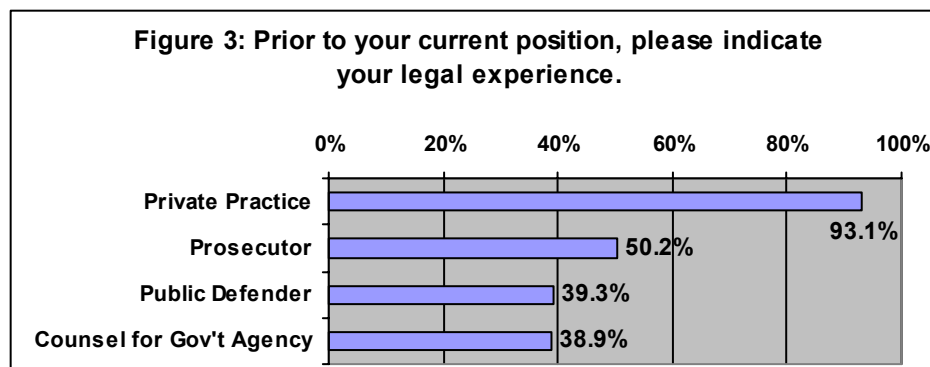
Judicial Position	% of respondents in this position
Judge (unspecified)	41.3%
Superior Court Judge	22.3%
Circuit Court Judge	17.4%
Magistrate	13.4%
Judge – Court of Appeals	3.2%
Judge – Small Claims Court	1.6%

Respondents were also asked how long they have been in their current judicial position. A majority of respondents (58.3%) have held their current position for less than ten years; 26.7% have served for ten to nineteen years, and 13.4% have served for twenty-nine years. Three respondents have held their position for thirty to thirty-nine years, and one respondent has served for more than forty years.





We also asked what legal experience respondents had possessed prior to their current judicial position. The most common prior legal experience was private legal practice, which 93.1% of respondents had practiced at some time in their careers. This was followed by experience as a prosecutor (50.2%) and public defender (39.3%). The chart below shows the most frequent answers to this question; full data are available in Appendix C. Respondents were asked to indicate all legal positions they had previously held; therefore, the percentages in the chart below do not sum to one hundred.



Finally, we asked for the total length of respondents' careers in the judiciary. Forty-four percent have served on the bench for fewer than ten years; 36% have served for ten to nineteen years; 18.2% have served for twenty to twenty-nine years. Four respondents have served for thirty or more years.

## Main Findings

### Translation services for non-English speakers

The first section of the body of the questionnaire asked respondents about issues related to the use of language interpreters in the courtroom. This section explored the attitudes of judicial officers toward finding interpreters, the demand for interpreters in Indiana courts, and the problems judicial officers face in meeting that demand.

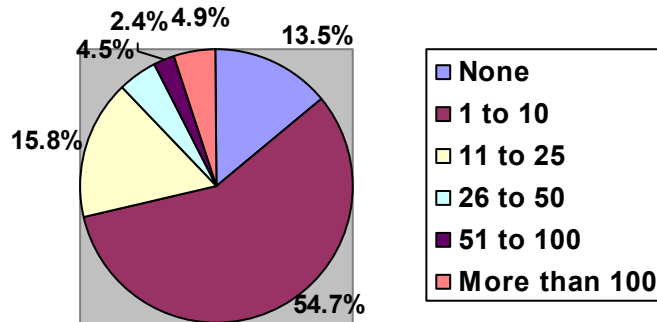
Respondents' attitudes toward the use of interpreters were generally positive. The vast majority were willing to appoint interpreters when necessary – more than 95% of respondents had never refused a request for an interpreter. Furthermore, judicial officers were willing to use multiple strategies to assist a litigant who needs an interpreter when none are available. The average respondent indicated that he or she uses two to three strategies in that circumstance, including the following: postponing the proceedings, allowing a family member or friend to interpret, and allowing counsel to interpret. The table below shows the most frequently cited strategies for dealing with interpreter unavailability.

**Table 2: Strategies for dealing with interpreter unavailability**

Strategy	% Using this Strategy
Postpone proceeding until interpreter available	77.3%
Allow family member to interpret	51.4%
Allow friend of defendant to interpret	48.2%
Allow bilingual counsel to interpret	27.9%
Ask other court personnel to interpret	15.0%

Next, we asked judicial officers about the demand for interpreters in the courts. First, 90.3% of respondents reported that they had used translators for non-English speakers in their courtrooms during the past five years. Furthermore, 89.5% had used an interpreter in the past six months. A majority of respondents (54.7%) had used interpreters between one and ten times in the past six months, but some (4.9%) had used interpreters over 100 times. The median number of times interpreters were used in the past six months was 6 times. The chart below shows the frequency of interpreter use in the past six months reported by all respondents.

**Figure 4: Estimate how many times you have used an interpreter in your courtroom in the last six months**



Another important issue related to demand for interpreters is the language for which translation was needed. We asked those judicial officers who had used interpreters in the past five years which languages had been represented. The vast majority of interpretation needed was between Spanish and English (84.6%). In addition, 25.5% of judicial officers had required the services of an American Sign Language interpreter. The table below shows the interpreted languages most commonly cited by the panel of judicial officers surveyed; refer to Appendix C for a full listing of languages reported by respondents.

**Table 3: For what languages were interpreters required?**

Language	% of judicial officers reporting
Spanish	84.6%
American Sign Language	25.5%
Vietnamese	10.1%
Chinese	9.7%
Russian	6.1%

On a related note, respondents were asked whether they or their staff were bilingual or multilingual. The responses revealed that bilingual fluency is rare among judicial officers and court employees. Very few judicial officers surveyed (5.3%) were currently fluent in any language other than English. Slightly more respondents reported that at least one member of their court staff is fluent in another language (15.7%).

Next, we asked judicial officers about some of the issues and problems associated with courtroom interpretation, including interpreter qualifications and problems with availability. With regard to interpreter qualifications, 79.8% of respondents agreed that “court interpreters are fluent in both English and the interpreted language.” However, there appear to be few standard procedures and qualifications in place to ensure interpreter competence. The questionnaire asked about both standards of interpreter competence and about procedures for checking interpreters’ credentials. A majority of judicial officers (66.4%) indicated that they had no minimum standards against which interpreters’ credentials were checked. Furthermore, there was little uniformity of standards and procedures among those who did report a minimum standard. Even the most frequently reported standard – familiarity with language and idioms – was reported by only nine respondents (3.6%). The other top answers were “Court general administrator handles decision,” reported by seven respondents; “college degree” and “verify [credentials] under oath” were each reported by four respondents. All other standards were reported by three respondents or fewer. A full listing of standards is available in the marginal tabulations (Appendix C). Responses to items regarding methods for checking interpreter credentials were similarly diverse. Many respondents (14.6%) failed to answer this question; however, the most common response (19.8%) was that the interpreter’s references, resume, experience, or credentials are checked. In another sign of the problem noted above, 18.2% of respondents reported that there is no process in place for checking interpreter credentials. Other top answers include “placing interpreter under oath/asking questions” (12.6%) and using a referral agency (11.7%). The lack of consistency, uniformity, and general standards for courtroom interpreters are evident in the widely distributed variation in responses to this item.

Our results show that judicial officers experience a moderate amount of difficulty finding interpreters when they are needed; this difficulty may help to explain the laxity of standards. Thirty percent of judicial officers report that they have been unable to find an interpreter when one was needed for a court proceeding. We asked that 30% about the circumstances that prevented them from finding an interpreter. Approximately 67.5% of those who had been unable to locate an interpreter explained that the difficulty was due to the unavailability of interpreters qualified to translate the required language, often because there are few speakers of the required language in the area.

To conclude this section, we asked judicial officers to comment on what specific actions they are taking to improve the use of interpreters in the courtroom. Over sixty percent of respondents gave no comment on this topic. However, respondents who did comment are using strategies such as maintaining a list of available interpreters, hiring staff interpreters, and studying the Spanish language themselves.



## Hiring and appointment practices

The questionnaire examined judicial officers' hiring and appointment practices for many positions within the court system. We asked about both the numbers of women and minorities hired and the criteria used to select different types of employees. The types of positions we asked about include the following categories: (1) law clerks and interns; (2) arbitrators, mediators, special masters, receivers, and experts; (3) secretaries, courtroom deputies, and court reporters; (4) public defenders; (5) clerks of the court; (6) chief probation officers; (7) pro bono counsel; and (8) appointees to panels, advisory committees, or task forces.

For the three categories representing law clerks, arbitrators, and clerical staff, the questionnaire asked for the total number of individuals hired in the past year as well as a count of the number of minority females, minority males, non-minority females, and non-minority males hired. The table on the next page presents these data for each of the eight categories listed above, as well as the percentage of total hired constituted by each race and gender group<sup>2</sup>. Also, the "Law Clerks and Interns" column includes clerks and interns hired or working in the past year. Other data for clerks and interns, including applications, offers, and recent hires, are available in Appendix C.

**Table 4: Hiring and appointments in Indiana courts, by race and gender**

	TOTAL HIRED	MINORITY FEMALE	MINORITY MALE	CAUCASIAN FEMALE	CAUCASIAN MALE
1: LAW CLERKS AND INTERNS	142	29 20.4%	7 4.9%	71 50.0%	35 24.6%
2: ARBITRATORS, SPECIAL MASTERS, RECEIVERS, MEDIATORS, COURT APPOINTED EXPERTS	4520	56 1.2%	170 3.8%	1041 23.0%	3253 72.0%
3: SECRETARIES, COURTROOM DEPUTIES, COURT REPORTERS	1538	103 6.7%	223 14.5%	1055 68.6%	157 10.2%

As can be seen in Table 4, the judicial appointees in the second category were 93% non-minority, including 72% non-minority males. The traditional clerical positions in the third category were filled mainly by females (75.3%), including 68.3% non-

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<sup>2</sup> The questionnaire asked respondents to estimate both the total number of employees hired and the number of employees hired in each race/gender category. Respondent omissions and estimates in filling out the questionnaire led to discrepancies between their reported totals and the sum of the reported numbers of each race/gender group. To facilitate analysis, the "Total Hired" column in Table 4 represents the sum of the race/gender groups, **not** the respondents' own estimated totals.

minority females. The greatest representation of minorities and especially minority females was in the category of law clerk and intern positions. Since these positions are often opportunities for young people entering the field, the representation of minorities in this category may point to improving access to legal education and careers. In sum, while traditional patterns of race and gender distribution in employment continue, some progress may be appearing for women and minorities now entering the legal field.

### **Factors in hiring and appointment decisions**

In addition to the numbers of employees in the positions above, we also asked respondents to rate the importance of various factors and qualifications in their hiring process for each type of position. We asked about merit factors such as experience and education, personal qualities, and demographic factors including race and gender. Each factor was rated on a scale of 1 to 5, with 1 being not at all important and 5 being very important. For the purposes of this section, “important” means a 4 or 5 rating; “unimportant” or “not important” means a 1 or 2 rating.

The first positions rated were clerkships and internships. Only 30.4% of judicial officers surveyed reported that they select their own law clerks and interns. However, for those who do select clerks and interns, the factors most often rated important include law school achievement, personality, and reputation/recommendation from others. These were closely followed by writing ability and computer skills. Factors most often rated not important were LSAT score, applicant’s judicial philosophy, gender, and race/ethnicity. Those who did rate gender or race/ethnicity as a 4 or 5 were asked the reason for its importance. With the exception of two respondents who believe that “females work harder,” all responses to this question related to the importance of diversity and equal opportunity in the workplace. Therefore, at least for law clerks and interns, respondents’ consideration of race and gender in hiring was motivated by a desire to include more women and minorities in hiring.

Most judicial officers surveyed (67.5%) select employees in the second category – arbitrators, mediators, receivers, special masters, and court appointed experts. For these positions, the hiring factor most often considered important was reputation/recommendation from others (79.3% of respondents). Other top factors included prior personal experience with applicant (72.9%) and prior work experience (68.8%). Eighty percent of respondents rated race and ethnicity as unimportant; 80% also rated gender as unimportant.

Over 90% of respondents select candidates for the third category, judicial staff. For these positions, prior employment and work experience was the qualification most often rated important (89.6% of respondents). Other top-rated factors were personality (87.8%), personal experience with the applicant (64.1%), and writing skills (54.8%). As in previous categories, very few respondents rated race or gender as highly important. About five percent of respondents considered race an important factor, and about six percent considered gender important.

Forty-two percent of respondents indicated that they are involved in the selection of public defenders. For this position, respondents’ ratings of hiring factors were narrower than for other positions. The only qualifications rated as important by a majority of judicial officers were prior professional contact (76.9%) and opinion of judicial

colleagues (54.4%). With regard to race and gender, 86.3% rated race as unimportant, and 89.2% considered gender unimportant.

Fifty-eight percent of judicial officers surveyed indicated that they participate in voting for the position of Clerk of the Court. For those who participated in the voting, work experience was most frequently rated important (84.7%), followed by recommendations (65.8%), personality (65.1%), and computer skills (55.3%). No respondents considered gender an important factor for clerk of the court, and only one respondent considered race an important factor.

Over 58% of respondents indicated that they take part in selecting the Chief Probation Officer for their court system. The most important factor in hiring Chief Probation Officers was prior employment and work experience, rated important by 97.2% of respondents. Other important factors included personality (83.4%), prior professional contact (82%), and reputation or recommendations (72.9%). Just three respondents (2.1%) considered race or ethnicity an important factor; five respondents (3.5%) considered gender important.

Forty-five percent of judicial officers reported that they participate in the selection of pro bono counsel or counsel for indigent defendants under the Criminal Justice Act. Eighty-two percent rated prior professional contact as important, making this the most frequently considered factor. Work experience was considered important by 76.5%, followed by reputation/recommendation from others (69.9%). Three percent considered the counselor's gender an important factor, and 4.5% considered the gender of the litigant or defendant important. Four point four percent considered the race of the counselor important, and 4.4% considered race of the litigant or defendant an important factor.

Finally, we asked respondents what factors were most important in their appointments to panels, advisory committees, and task forces. Approximately 42% of respondents report that they select members of these groups. As in previous categories of court employment, prior employment and work experience was a primary qualification, considered important by 84.6% of respondents. This was closely followed by reputation/recommendations (78.2%) and personality (75.6%). For this group, 7.8% considered race an important factor, and 7.7% considered gender important.

Overall, the number of respondents who considered race and gender as important hiring factors was minimal. For all categories, qualifications and experience were primary factors; personality was also important to many types of court employment. To conclude this section, we asked what respondents are doing personally to improve hiring and appointment decisions in their courts. The most common answers related to standardizing appointment and evaluation procedures (7.3%). The table below includes the most common responses; full data are available in Appendix C.

**Table 5: What are you doing, personally, to improve hiring and appointment practices in the judiciary?**

<b>Coded response category</b>	<b>Number and percentage of respondents</b>
Approving standardized employment and evaluation practices	18 7.3%
Do things right personally (general)	13 5.3%
Seek better applicants/avoid party favoritism	12 4.9%
Cooperating with other county judges to make selection	10 4.0%
Typically hire people with whom I am familiar	7 2.8%
Implemented selection committee with outline for interviewing	6 2.4%
Implemented selection committee with outline for interviewing	5 2.0%

## Racial and Ethnic Discrimination in Indiana Courts

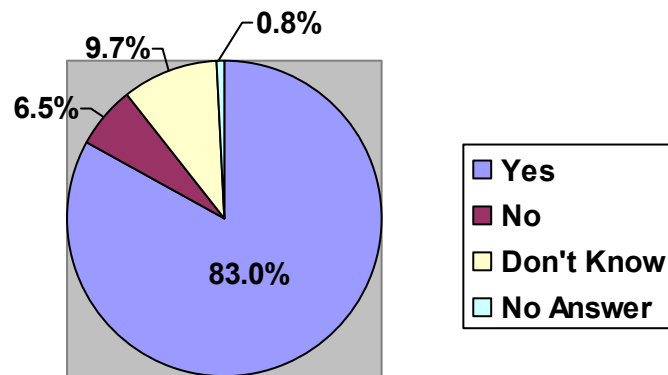
The next major area that the survey addressed was racial and ethnic discrimination in the Indiana judicial system. The questionnaire explored many dimensions of the problem of racial unfairness in the courts. The major areas addressed were race-based harassment or mistreatment of different types of participants in the legal process and the fairness of case outcomes. This section will discuss respondents' observations of race-based unfairness against judges, court employees, litigants, witnesses, and attorneys. One factor to consider in interpreting these results, especially for questions related to demeaning or disparaging behavior in court, is that between 18 and 30 percent of respondents gave no answer or answered "Don't Know" to each question.

### Discrimination against Judges

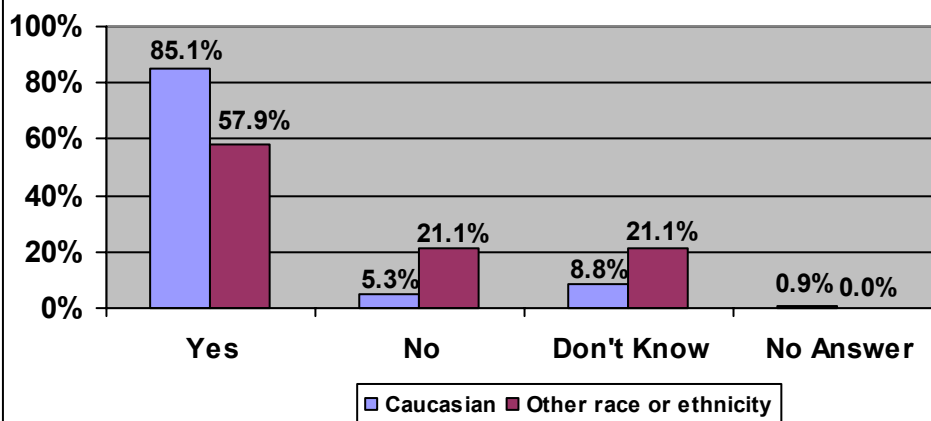
Most judicial officers (83%) surveyed feel that they "have been treated with the same respect as judges of another race or ethnic identity." However, when responses to this item were crosstabulated with the respondent's race or ethnic identity, significant relationships appeared. Specifically, over 85% of respondents who identify as Caucasian/white feel they have been treated with the same respect as judges of other races, while only 57.9% of respondents who identified with another race or identity agreed with this statement. The pie charts below compare the opinions of judges overall with those of judges grouped by race and ethnicity.



**Figure 5: Do you feel you have been treated with the same respect as judges of another race or ethnicity? -- Overall**

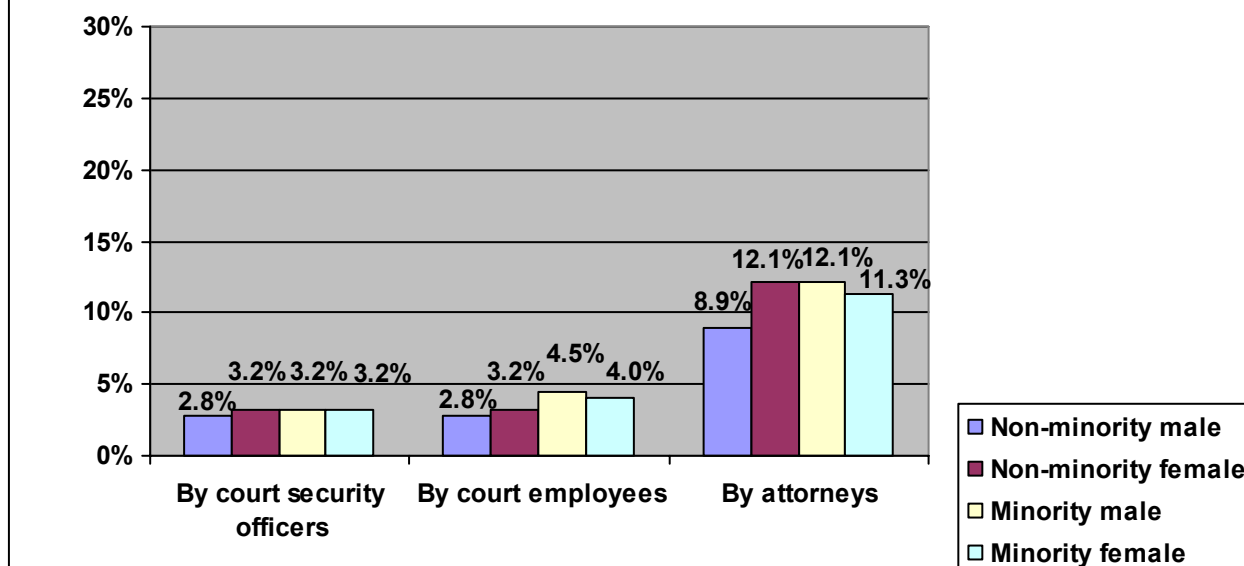


**Figure 6: Do you feel you have been treated with the same respect as judges of another race or ethnicity? -- By race/ethnicity**



The questionnaire also asked whether respondents had observed court security officers, court employees, or attorneys “say or do anything...which you thought demeaned or disparaged [a judge] based upon his or her race or ethnicity only.” The chart below presents data on the type of court system participants observed disparaging judges, the race and gender of the disparaged judges, and the percentage of respondents who observed each type of disparagement. For example, the leftmost bar indicates that 2.8% of respondents observed race-based disparagement of non-minority male judges by court security officers. Even including those who said disparagement occurs only rarely, the percentage of respondents reporting any racial harassment is quite low.

**Figure 7: Race-based disparagement of judges in court**



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

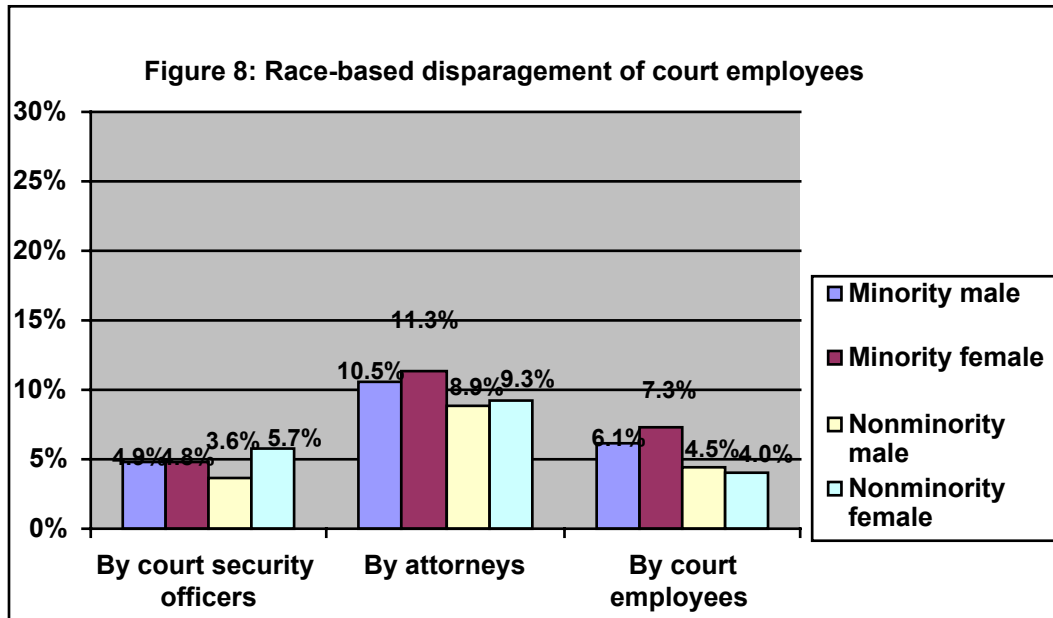
The chart shows that attorneys were the court participants most often observed disparaging judges on the basis of race. Twelve percent of respondents had observed attorneys disparaging non-minority female and minority male judges on the basis of race, and 11.3% had observed attorneys disparaging minority female judges. Respondents' observations of racial harassment of judges had a modest but statistically significant relationship to the respondent's race. Minority judges were more likely than non-minority judges to report that they had observed harassment of minority males by court security officers and court employees. For security officers, this association is significant at the .01 level and has a contingency coefficient of +.21. For court employees, the relationship is significant at the .05 level and has a contingency coefficient of .18<sup>3</sup>.

### **In court employment**

Perceptions of racial discrimination against court employees were extremely low among judicial officers. As in the section above, we asked whether respondents had observed demeaning or disparaging treatment of court employees based on race or ethnicity. The chart below shows that few judicial officers had observed such disparagement. Of the types of court participants we asked about, respondents were most likely to have observed attorneys demeaning court employees on the basis of race or ethnicity. Eleven point three percent of respondents had observed attorneys disparaging minority female court employees on the basis of race; 10.5% had observed attorneys disparaging minority males. The chart below shows the percentage of judicial officers

<sup>3</sup> The level of significance refers to the probability that an apparent association between two variables is a result of random chance rather than real association; the lower the level, the lower the probability of chance. Contingency coefficients range from zero to something less than one. A coefficient of 0.2 or less is considered weak; 0.2 to 0.35 is moderate; greater than 0.35 indicates a strong association. This statistic is best used in a comparative fashion to show stronger versus weaker associations.

observing race-based harassment of court employees; it is read in the same way as the chart in the previous section.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

Furthermore, minority judges were slightly more likely to observe race-based harassment of court employees by security officers and attorneys than were non-minority judges. For harassment by security officers, the association is significant at the .01 level and has a contingency coefficient of +.24. For harassment by attorneys, the association is significant at the .05 level and has a contingency coefficient of +.27. The association between respondents' race and respondents' observation of attorneys' race based disparagement of minority male court employees is significant at the .05 level and has a contingency coefficient of +.22.

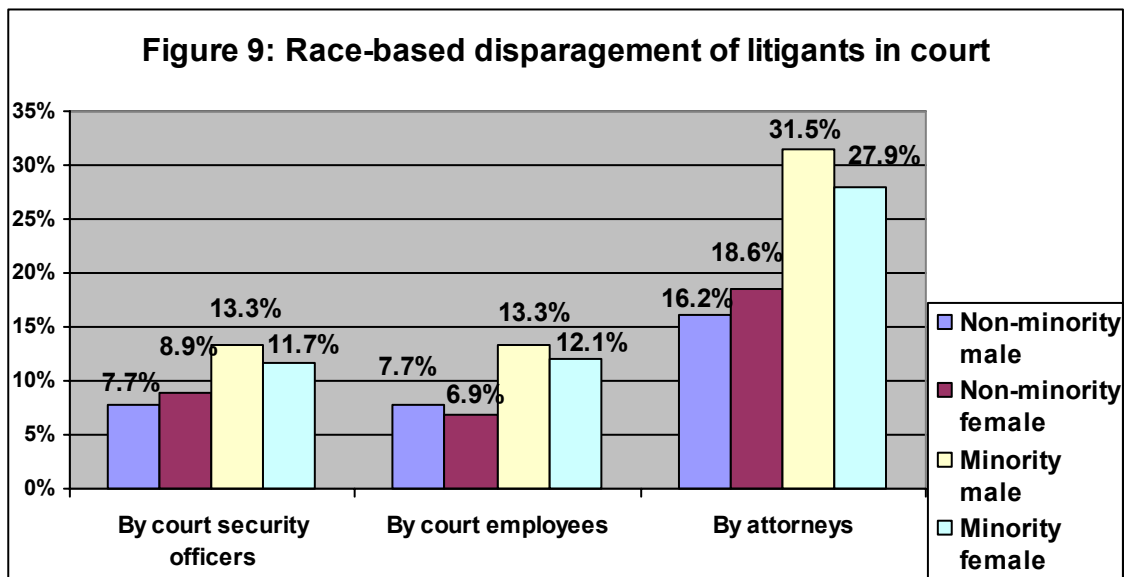
## Racial discrimination against litigants

The questionnaire measured several dimensions of racial discrimination against litigants, including plaintiffs and defendants in civil suits as well as criminal defendants. First, as in previous sections, we asked about demeaning or disparaging treatment of litigants by various types of court participants. Second, we asked about racial bias or injustice in the outcomes of litigants' cases. Finally, we asked about racial identification of defendants in the media.

As in the previous section, many questions in the questionnaire asked if respondents had observed certain types of court system participants discriminating against litigants. First, 32.8% of respondents reported that they had observed judges

treating individuals in a discriminatory manner in court. Of these 32.8%, 55.7% reported that judges had made some race-based disparaging or discriminatory comments or jokes, or had handed down biased rulings on the basis of race or gender. However, due to the question wording of this item, it is difficult to determine whether respondents felt that judges' discriminatory conduct was primarily based on race or ethnicity as opposed to gender. In addition to questions about discriminatory conduct by judges, we also asked whether respondents had observed race-based discriminatory conduct against litigants on the part of court employees, court security officers, and attorneys.

Response rates to these questions were somewhat low, with between 28 and 30 percent of respondents giving no answer or reporting no opinion. Furthermore, more judicial officers observed race-based disparagement of litigants than of any other type of court participant. Observation of race-based harassment of litigants by court employees and court security officers were comparable to the highest levels of observed harassment of other court participants. Furthermore, the percentage of judicial officers who had observed racial harassment of minority male litigants by attorneys rose above 30%. The chart below shows the percentages of respondents who have observed any disparaging treatment of litigants by security officers, employees, and attorneys.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

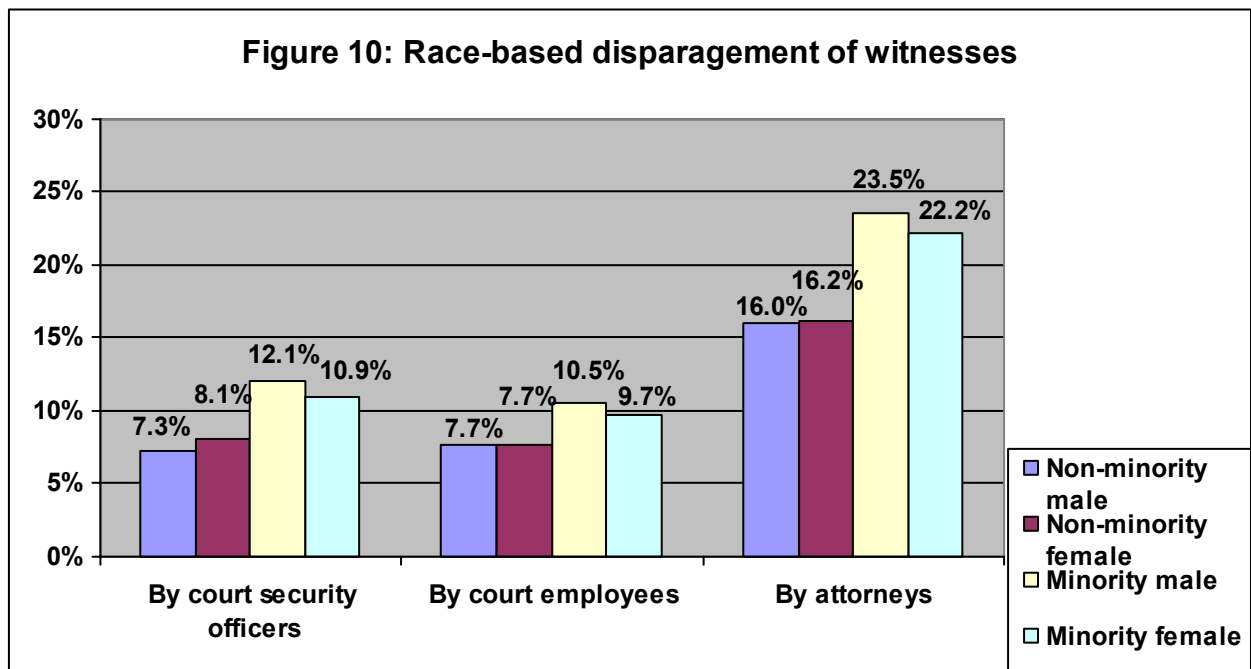
As in previous sections, minority judges were more likely than non-minority judges to report observing racial harassment of litigants by court security officers and court employees. The association between respondents' race and respondents' observation of security officers' race-based disparagement of minority male litigants is significant at the .05 level and has a contingency coefficient of +.26. The association between respondents' race and respondents' observation of court employees' race-based disparagement of minority female litigants is significant at the .001 level and has a contingency coefficient of +.26. Finally, the association between respondents' race and observation of court employees' race-based disparagement of minority male litigants is significant at the .01 level and has a contingency coefficient of +.25. All these associations indicate that minority judges were slightly more likely than non-minority judges to observe certain types of racial harassment of litigants. The probability that the



associations are a result of random chance is low, but the strength of the association is modest.

### Against witnesses

The level of respondents' observation of racial harassment of witnesses was similar to the level of harassment of litigants, and much higher than observed harassment of other court participants. Continuing the pattern of the previous sections, attorneys were most likely to be the party observed demeaning a witness on the basis of race, and minority witnesses were more likely to be harassed by all three types of court participants.



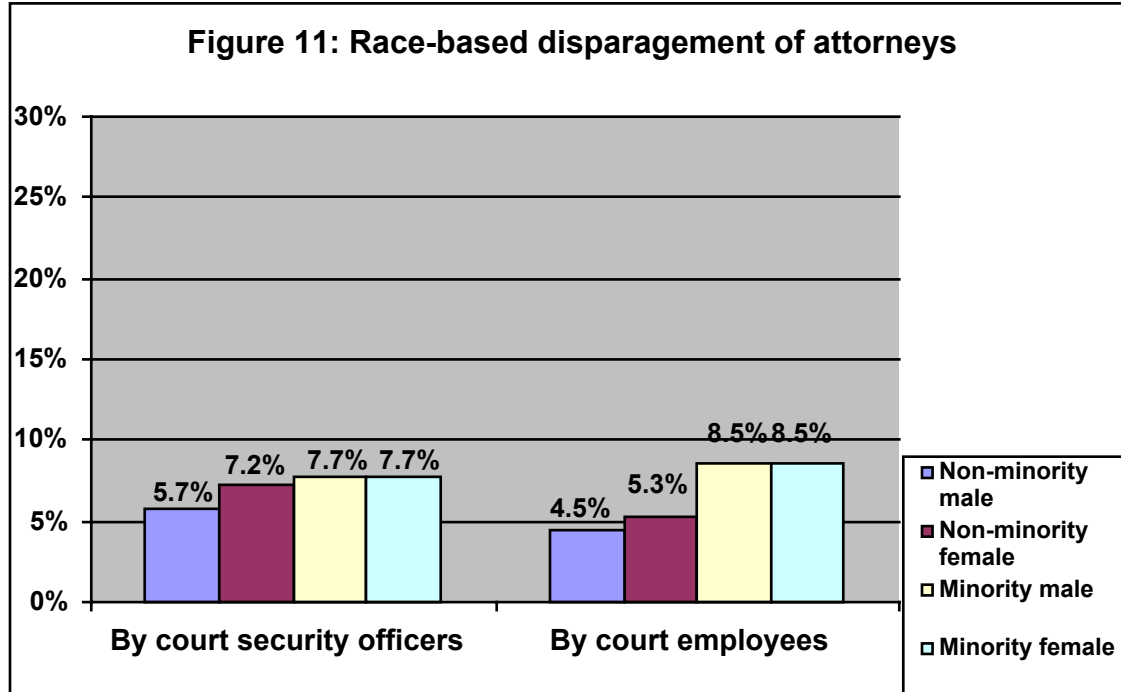
Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

Again, minority respondents were slightly more likely than non-minority respondents to recognize racial disparagement of witnesses. For disparagement of minority male witnesses by attorneys, the association between respondents' race and response to this question is significant at the .01 level and has a contingency coefficient of +.23.

### Against attorneys

As with judges, court employees, witnesses, and litigants, the questionnaire asked how often respondents had witnessed race-based disparaging treatment of attorneys in court by court security officers or court employees. Few respondents reported observing such conduct; court employees were observed disparaging attorneys more often than

court security officers. Overall, only one respondent reported observing race-based disparagement “often,” and no respondents observed it “always.” The chart below shows the total percentage who observed it rarely or often.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

Minority respondents noted more disparagement of minority male attorneys by court employees than did non-minority respondents. The association between race of respondent and response to this item is significant at the .01 level and has a contingency coefficient of +.21.

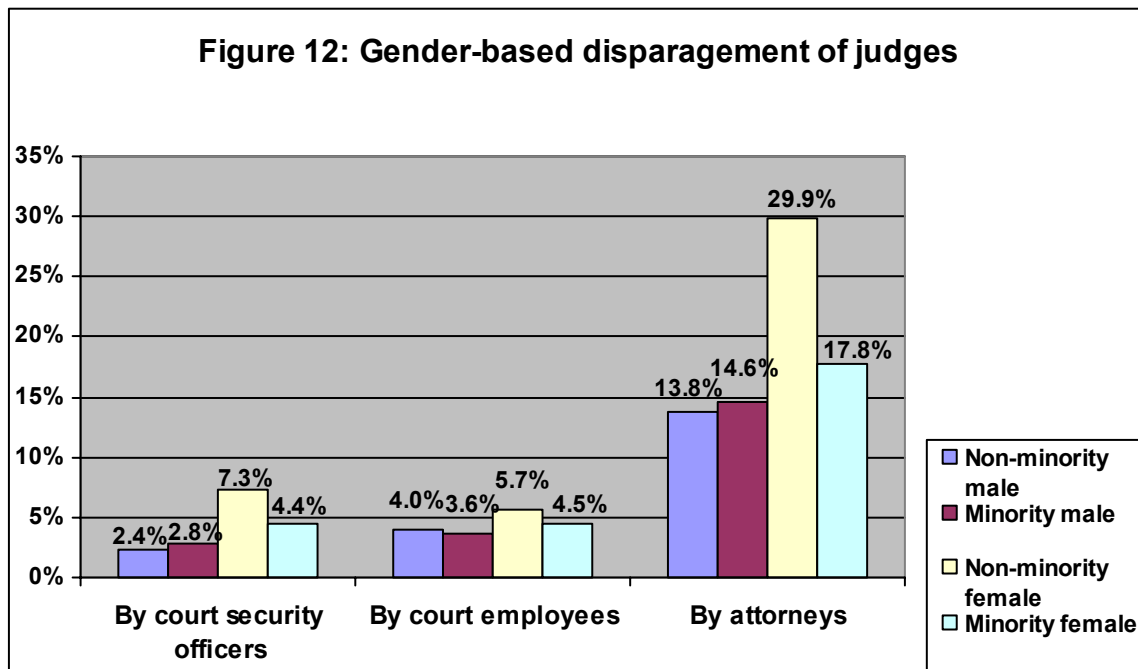
## Awareness of gender discrimination

The survey addressed gender discrimination in a manner substantially similar to the treatment of racial discrimination. The questionnaire explored gender-based disparagement and harassment among court system participants and the influence of gender on the outcomes of court cases. The following section will address these issues according to the type of judicial participant affected by gender discrimination. Some caution should be used in interpreting these results, as many respondents (18-30%) gave no answer or replied “Don’t know.” This caution applies especially to the questions relating to observation of demeaning or disparaging behavior in court.

## Gender discrimination against judges

A majority of respondents (75.3%) agreed that they had been treated with the same respect as judges of another gender, while 15.4% did not agree. Another 9.3% did not know or gave no response to this item. However, men were much more likely than women to agree that they had been treated with the same respect as judges of another gender. While 83.3% of male judicial officers agreed, only 38.1% of female judicial officers agreed. The association between gender and agreement with this item passes the .001 level of significance and has a contingency coefficient of +.47. This coefficient is remarkably high and indicates a strong association between respondents' gender and perceptions of gender fairness.

As in the section on racial discrimination, the questionnaire also asked about respondents' observations of gender-based harassment in court. The chart below follows the pattern of those in the racial discrimination section, with the bars representing the percentage of respondents reporting judges of each race and gender being demeaned or disparaged by each type of court participant. As in the section on racial discrimination, attorneys were most likely to be observed engaging in gender-based disparagement of judges. Non-minority female judges were the most commonly reported targets of gender-based disparagement by all three types of court participants.



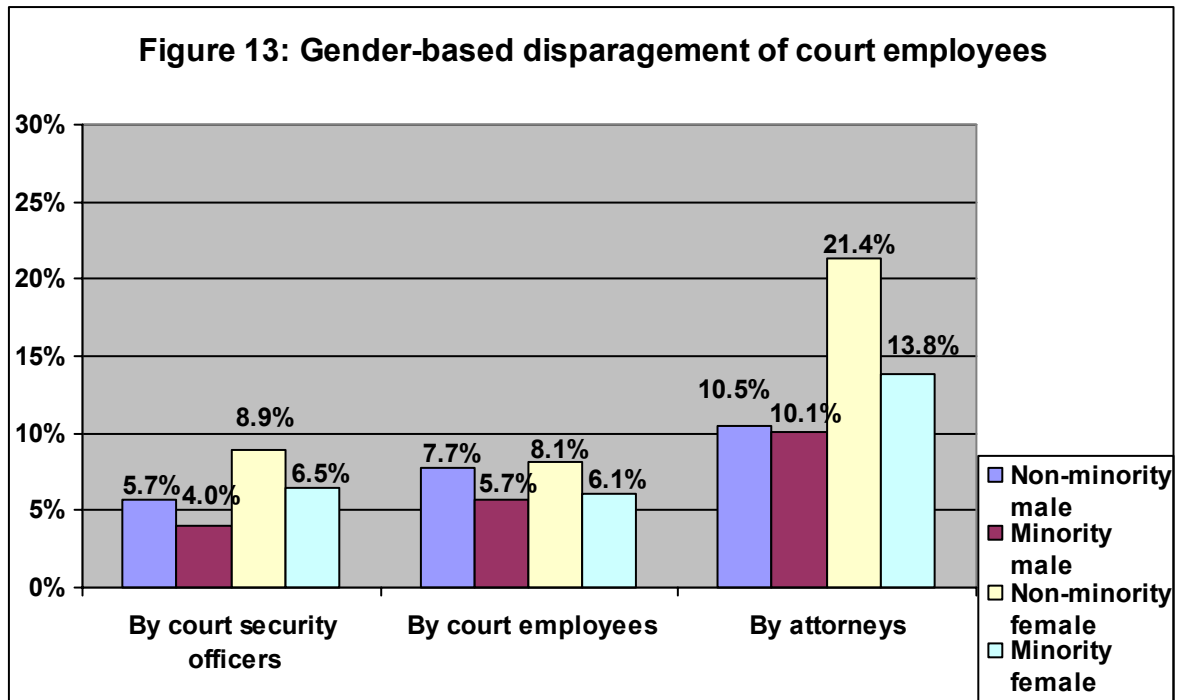
Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

There were modest but statistically significant relationships between respondent gender and perception of gender-based disparagement of judges. Female judges were more likely to observe court security officers disparaging both minority and non-minority female judges. For minority females, the association is significant at the .05 level and has a contingency coefficient of +.26. For non-minority females, the association is significant at the .01 level and has a contingency coefficient of +.30. Female respondents were also

more likely to observe gender-based disparagement of non-minority female judges by attorneys. This association is significant at the .01 level and has a contingency coefficient of +.29.

### In court employment

The section on gender discrimination against court employees includes only questions about demeaning or disparaging treatment by other court participants. The chart below follows the pattern of all other charts on this topic.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

Again, female judges were slightly more likely than male judges to witness gender-based disparagement of court employees by both court security officers and other court employees. For disparagement of non-minority females by security officers, the relationship between respondent gender and perception of harassment is significant at the .05 level and has a contingency coefficient of +.24. For disparagement of minority females by court employees, the association was significant at the .01 level and has a contingency coefficient of +.27.

### Against litigants

The questionnaire asked several questions about the effect of gender on family law proceedings. First, we asked about the likelihood that gender plays a role in custody and visitation issues. Nine point seven percent believe that this situation is very likely, 36.8% believe it is somewhat likely; 15.4% believe it is somewhat unlikely, and 38.8% believe it is very unlikely or not likely at all. Furthermore, a majority (59.5%) believe that child support decisions and enforcement are not affected by gender. However, 21.9%



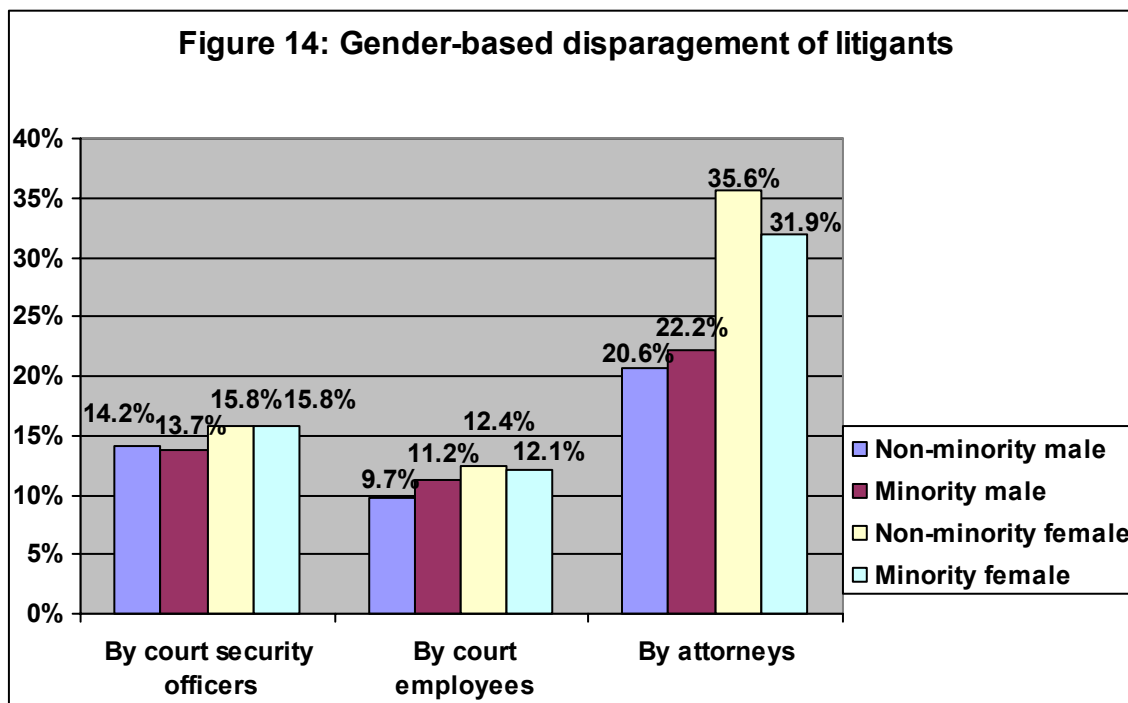
believe that child support decisions are affected by gender, and 18.6% gave no answer or did not know. Finally, we asked whether gender affects the outcome of the majority of dissolution settlements involving property. A majority of respondents (56.3%) believe that gender does not affect the majority of dissolution settlements, while 22.3% believe that gender does affect these outcomes. Another 15% did not know whether gender was a factor, and 6.5% gave no answer.

In addition to these questions about the effects of gender on the outcomes of court cases, we also asked about gender-based demeaning or disparaging treatment of litigants

in court. The chart below follows the format of previous figures, showing the percentage of respondents who had observed any such treatment of litigants on the part of court participants. Rates of observed harassment of litigants on the basis of gender were quite high compared to observed harassment of other types of court employees. For example, over twenty-nine percent of respondents observed gender-based harassment of non-minority female litigants by attorneys.

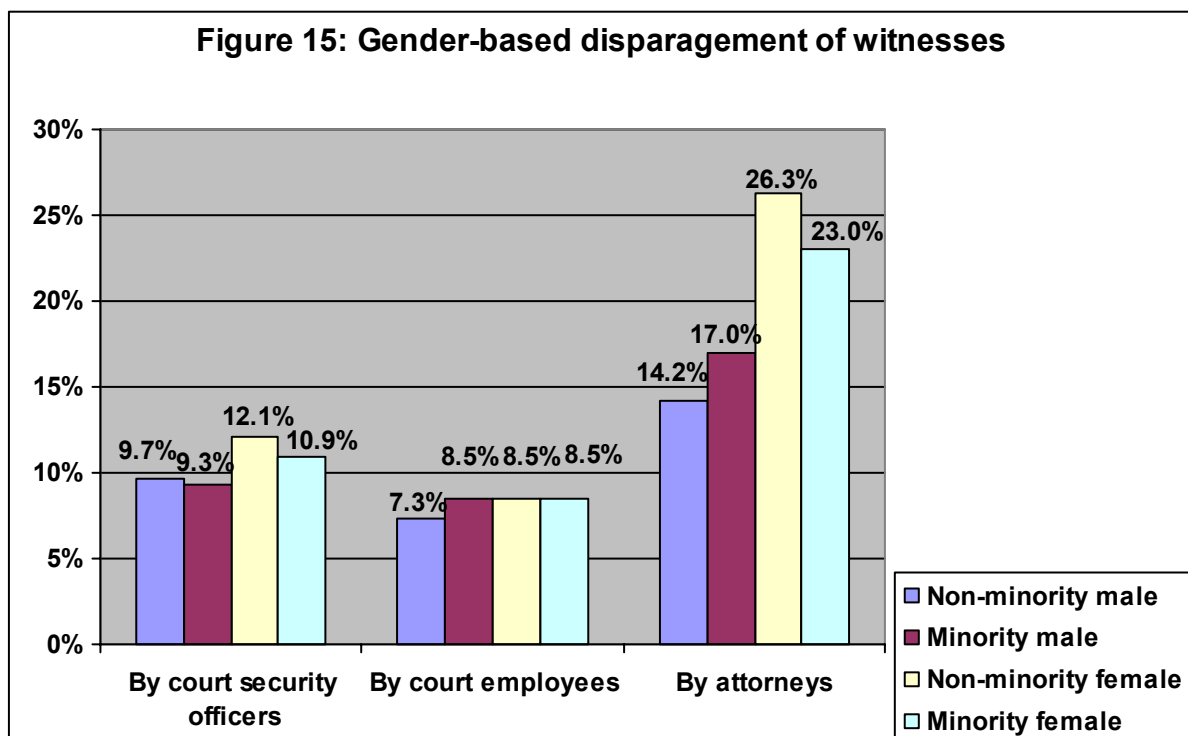
However, it should be remembered that the vast majority of responses included in this percentage indicated that disparagement took place “rarely.”

Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.



### Against witnesses

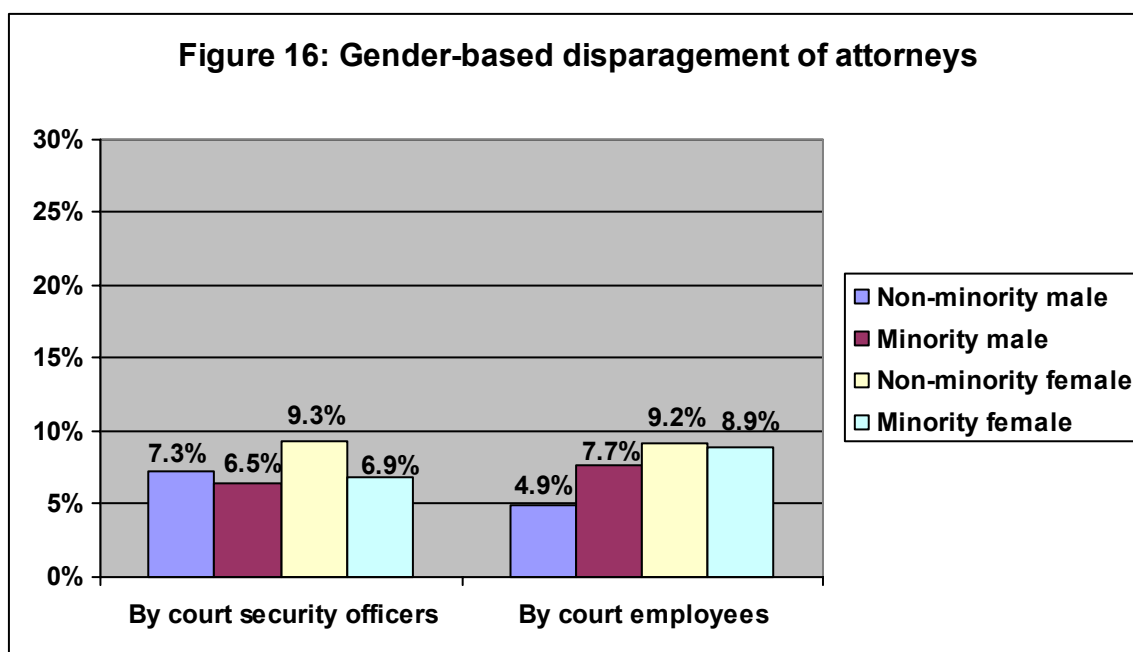
The survey’s exploration of gender discrimination against witnesses was limited to items about gender-based disparagement in court. Again, attorneys were most likely to be observed disparaging witnesses on the basis of gender; again, most judicial officers felt such disparagement took place only rarely.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

### Against attorneys

The questions about gender-based harassment of attorneys were also limited to items regarding demeaning and disparaging behavior. Perceptions of such behavior were low compared with perceptions of harassment against other types of court participant. Those who did observe disparaging behavior usually observed it rarely. The gender-based disparagement observed was most often directed toward non-minority females. Court security officers were observed harassing non-minority female attorneys by 9.3% of respondents; court security officers were observed harassing non-minority female attorneys by 9.2% of respondents.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

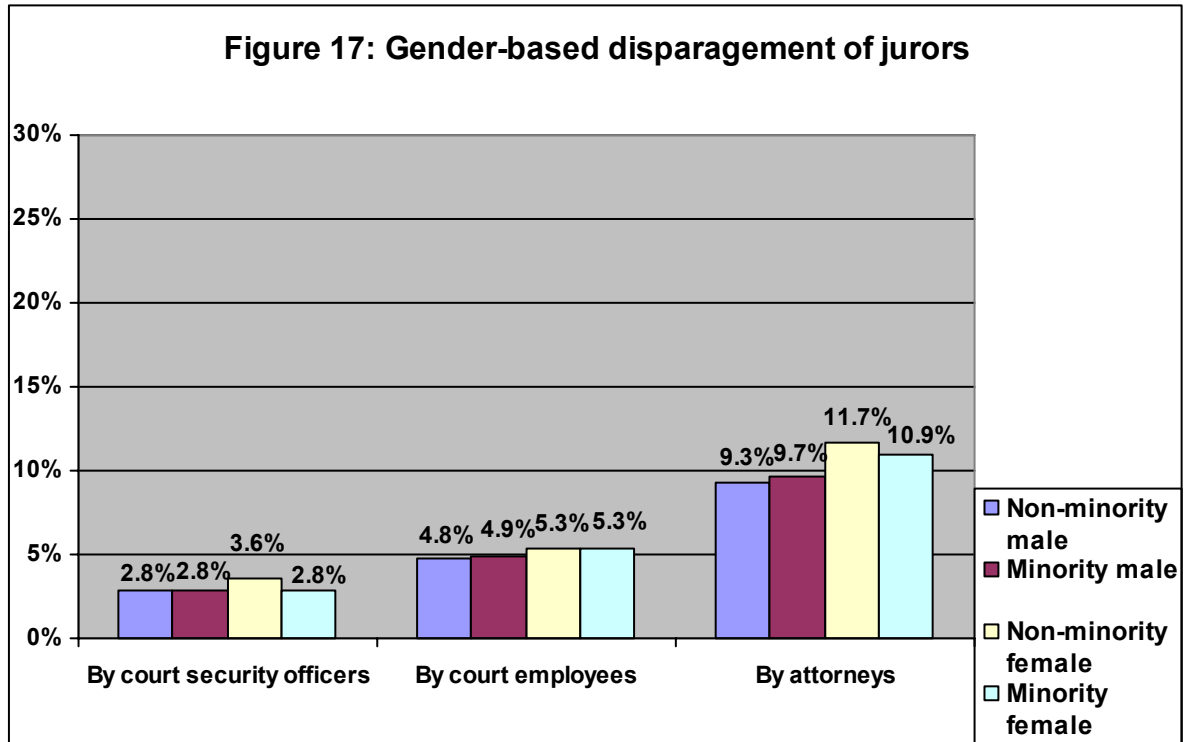
## Unfairness against jury panels

The survey addressed two aspects of discrimination against jurors. First, we asked about the jury selection process. Second, we asked about instances of racial and gender-based harassment of impaneled jurors. This section will address each of these issues in turn.

A majority of respondents (70.6%) reported that they were unaware of any situations where gender or ethnicity has resulted in the unfounded exclusion of individuals from juries. With regard to race and ethnicity specifically, 48.5% of respondents felt that it was very unlikely that minorities would be excused peremptorily more than non-minorities, or that there was no difference in peremptory excusals of minorities and non-minorities. Fifteen percent thought race-based peremptory strikes were “somewhat unlikely,” 25.1% said “somewhat likely,” and 4.5% said “very likely.” Of the eleven respondents who felt race-based peremptory challenges were “very likely,” ten were male and one was female; nine were non-minorities and two were minorities. These demographics do not vary greatly from the overall sample.

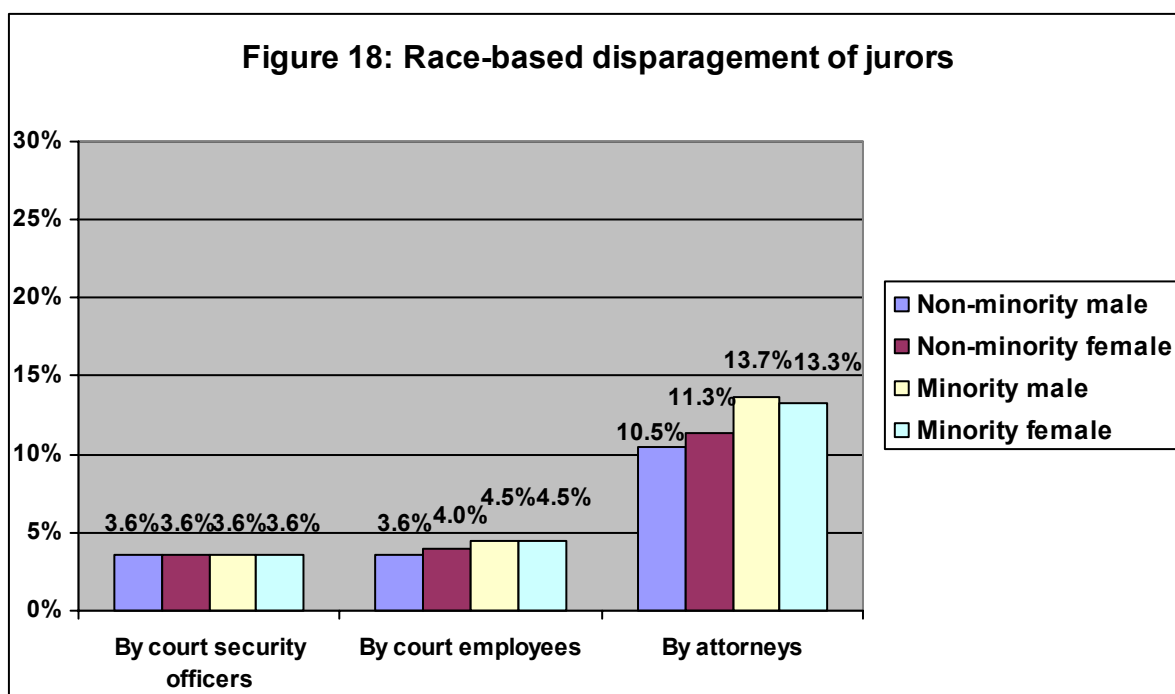
With regard to gender, 73.3% of respondents believed discriminatory peremptory strikes of women were “very unlikely,” or no more likely than peremptory strikes of men. For 12.6% of respondents, such gender-based strikes are “somewhat unlikely;” 6.5% said they were “somewhat likely;” and 1.6% said they were “very likely.” Finally, we asked, “What is the likelihood that minority female members on a jury panel will be excused peremptorily over the other members?” Again, a majority of judicial officers (58.3%) believed that there was no difference between minority female and other members’ being struck, or that discriminatory strikes against minority females were very unlikely.

With regard to the second issue, harassment of jury members, the survey addressed both race-based and gender-based disparaging conduct by court security officers, court employees, and attorneys. The charts below are like those in earlier sections, showing the percentage of respondents who witnessed any disparagement of jurors. Court security officers were least likely to be observed harassing jurors based on both race and gender; again, attorneys were most often observed engaging in this type of conduct. Race-based harassment was observed by more respondents than gender-based harassment for all types of court participants and all race and gender categories.



Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.





Note: Percent reported is the total percentage of respondents that reported any level of demeaning treatment for each category.

## Race and gender fairness overall

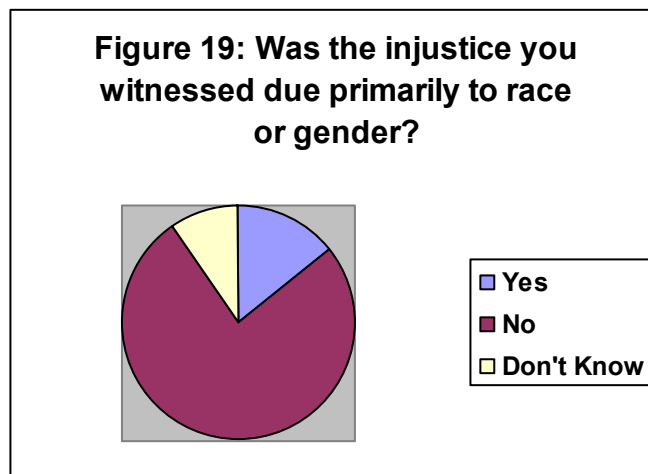
All things considered, the majority of respondents (84.2%) felt that judiciaries in their own counties were fair without regard to gender or ethnicity factors. Furthermore, a majority of respondents (62%) had not observed any judges demeaning or disparaging persons on the basis of race or gender. Those respondents who had observed discriminatory conduct by judges (32.8%) were asked to describe the incidents they had witnessed.

**Table 6: Incidents of discriminatory conduct by judges**

<u>Judge's demeaning or disparaging behavior</u>	<u>Respondents reporting (number and percentage)</u>
Women are discriminated against by male judges making sexist/sexual remarks	29 11.7%
Disparaging remarks aimed at persons by reference to their race, gender, or ethnicity	22 8.9%
Disparaging remarks and prejudicial rulings from judges	11 4.5%
Have noticed gender, race, ethnic jokes	10 4.0%
Abusive to lawyers (general)	8 3.2%

Respondents were also asked to describe any instance of racial or gender unfairness in the judicial systems of other counties. Only 6.6% of respondents gave an answer to this question. The most common instance of unfairness reported by respondents was “Judge openly demeans women,” reported by three respondents. “In smaller counties, blacks do not get a fair jury pool or trial” and “racial/ethnic comments in county judiciary would make minorities uncomfortable” were each indicated by two respondents. Other comments made by only one respondent are presented in Appendix C.

Another important dimension of race and gender unfairness to litigants in court involves the outcomes of litigants’ cases. Seventy percent of respondents knew of a judicial proceeding in Indiana of which they believed the outcome was unjust. However, only 14.5% of these respondents who knew of an unjust judicial outcome believed that the lack of justice was due primarily to race or gender. The chart below shows the full breakdown of responses to this item.



When these results were crosstabulated by the race or ethnicity of the respondent, it appeared that responses were associated with the respondent’s race. While only 13.9% of respondents who identified as Caucasian believed injustice was due to gender or ethnicity, 41.7% of respondents who did not identify as Caucasian believed that lack of justice was indeed due to gender or ethnicity. This association was significant at the .05 level and had a contingency coefficient of +.39, which indicates a strong association.

Finally, the questionnaire asked whether respondents would favor gender- and race-free identification of criminal defendants in the media. Responses to this question were fairly evenly split. The most common response was “don’t know,” chosen by 36.4% of judicial officers. Thirty-one point two percent would favor gender- and race-free identifications, 28.7% would not favor this, and 3.6% gave no response.

## Conclusions

The judicial officers surveyed did not, on the whole, perceive a serious problem with racial or gender discrimination in the Indiana Court system. However, the disparities between the perceptions of male and female judges, and between judges of different races, shed some doubt on the true extent of unfairness. One could interpret these findings in two main ways. First, we could conclude that there is not much racial or gender unfairness in the courts, and that women and minorities are more sensitive to

certain comments and actions. On the other hand, we could conclude that male and non-minority judges are not sensitive to the true extent of racial and gender unfairness existing in the courts, perhaps because it does not affect them personally. The finding that women and minorities, who would be expected to experience race and gender based unfairness most directly, do indeed perceive more unfairness is a significant finding of this survey, and deserves attention and interpretation.

Another interesting feature of the respondents' observations of discrimination, both race- and gender-based, is the fact that variances between races and genders of discriminatees were not very wide. That is, there were not many more reported observations of gender-based discrimination against women than of gender-based discrimination against men. Similarly, there were not many more observations of race-based discrimination against minorities than of race-based discrimination against non-minorities. This fact raises some questions about respondents' understanding of the questionnaire. However, if these results accurately represent the judicial officers' observations, they might be interpreted as evidence of dissatisfaction with affirmative action policies.

Hiring decisions appear to be based mostly on merit factors such as experience and education as well as personal contact with the applicant. The high importance assigned to factors such as "personal experience with the applicant" may indicate that personal networking is important in the court hiring process, which could work to the detriment of traditionally excluded groups. Although race and gender were not widely considered important in hiring for any position in the court system, race was most frequently considered important in selecting candidates for advisory committees, panels, and task forces.

One of the clearest deficiencies revealed by judges' experience and perception was the lack of availability of translators for non-English-speaking court participants. The lack of generally recognized credentials and standards for translators was also clearly recognized by judges, and points to the need for more effective selection and credentialing processes to ensure fair court proceedings for all participants.

In sum, despite the modest evidence for judicial perception of racial and gender unfairness discovered in this survey, perhaps the most telling indicator was the most common additional comment – "I've had no problems with the issues discussed." However, it should be noted that these data cannot be construed to indicate the real level of race and gender unfairness in the Indiana courts. What these data do indicate is the level of fairness that Indiana judges believe to exist and are willing to report.

# B

## APPENDIX

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## The Public Opinion Laboratory

# Court Participants' Perceptions of Race and Gender Fairness in the Courts

## Results of a Statewide Mail Survey of Indiana Judicial Officers

Presented to Myra Selby,  
Indiana Supreme Court Commission on Race and Gender Fairness

By  
Cassidy Cohenour, Brian Vargus, Andy Hutcherson,  
Brianne O'Brien, and Eric Riddles

September 2002



**Indiana University - Purdue University, Indianapolis**



## EXECUTIVE SUMMARY

- Six separate mail surveys were conducted during the summer of 2002.
- Attorneys
  - 201 completed questionnaires were received.
  - Sixty-four percent felt that courts in their county are fair with regard to gender, race, and ethnicity issues.
  - Gender-based harassment in court was noted by 15%; race-based harassment was noted by 10%.
  - Sixty-two percent believed that the outcomes of custody and visitation issues are affected by the gender of the litigant.
- Court employees
  - 240 completed questionnaires were received.
  - Overall, 95% said they believe their court is fair with regard to race and gender.
  - Twenty-two percent had observed an Indiana judge demeaning or disparaging people based on race, gender, or ethnicity.
  - Over 33% of respondents did not report that their court has a policy forbidding gender-based misconduct and requiring equal opportunity.
- Prosecutors
  - 117 completed questionnaires were received.
  - Eighty percent believed that the courts in their county are fair regarding race, gender, and ethnicity.
  - The most common inequity reported was gender bias in family law proceedings.
  - Nearly 30% had taken part in a proceeding for which an interpreter was needed but could not be obtained.
- Legal service providers
  - 42 completed questionnaires were received.
  - Over 20% of respondents made comments about problems with court interpretation.
  - Most respondents felt that their organizations were fair in employment policies and representation.
  - 95% said their organization frequently represents females; 98% said the organization frequently represents members of minorities.
- Law enforcement officers
  - 234 completed questionnaires were received.
  - Of the six groups, law enforcement officers seemed to be least conscious of race and gender inequities in the courts.
  - Two percent reported observing race-based harassment in court; three percent reported observing gender-based harassment.
  - Only 15% of respondents had direct experience in the courts as witnesses more than once per year.
- Public defenders
  - 165 completed questionnaires were received.
  - Nearly 30% had experienced a problem with obtaining a needed interpreter for a court proceeding.
  - Many respondents believed that there is a significant likelihood that members of racial and ethnic minorities will be excluded from juries.
  - Twenty-three percent had observed race-based harassment in Indiana courts; 21% had observed gender-based harassment.

## **I. Introduction**

In the fall of 2001, the Indiana Supreme Court Commission on Race and Gender Fairness contacted the Indiana University Public Opinion Laboratory to discuss the development of a research project regarding race and gender equity in Indiana courts. The Commission's research project was to assess the following topics:

- Discrimination and harassment in court based on race, ethnicity, or gender.
- The effects of race and gender bias on the fairness of case outcomes.
- Use of interpreters for non-English speaking litigants.
- Discrimination based on race or gender in jury selection.
- Equal employment opportunity in Indiana courts.

It was decided that this project would be best accomplished through mail surveys of seven types of participants in the court system – judicial officers, attorneys, court employees, prosecutors, public defenders, law enforcement officers, and legal service providers. The Commission and the Public Opinion Laboratory collaborated to develop a separate questionnaire for each population, so that each group would be asked about only those research issues directly relevant to their positions in the court system. All questionnaires are reprinted here in Appendix B. After receiving final approval of each questionnaire from the Commission, surveys were mailed to designated recipients. The Commission provided the Public Opinion Laboratory with lists of each type of Indiana court participant from which representative samples could be selected (see Appendix A for details on methodology).

The first questionnaire to be developed and implemented was the survey of judicial officers, which was mailed in March of 2002. The survey of judicial officers was therefore completed and reported in a previous document. The questionnaires for the remaining six populations were mailed from mid-June to early July of 2002, and responses were accepted through late August of 2002. These six surveys will be discussed in the present report.

Although all the surveys in this project addressed the same set of issues listed above, each was unique in terms of the combination of issues and the types of questions used to address each issue. Therefore, each survey will be reported in a separate subsection of this report. Each subsection will include a description of the demographics of the respondents, a discussion of the main findings of the survey, and some possible conclusions that could be drawn from the findings.

## **II. Survey Results**

### **A. Survey of Attorneys**

#### **Demographics**

In June of 2002, the Public Opinion Laboratory sent questionnaires to over five hundred attorneys throughout the state of Indiana. Each questionnaire was accompanied by a letter from the Chief Justice of the Indiana Supreme Court asking attorneys to participate in the study. The Public Opinion Laboratory received 201 completed questionnaires by the deadline of August 6, 2002, meeting the response target set forth in the agreement with the Commission on Race and Gender Fairness.

The total population contacted for this survey was a sample of Indiana attorneys from a list provided by the Commission on Race and Gender Fairness. Understanding the demographics of this group of respondents will aid in interpreting the survey results.

Males outnumbered females among those responding to the survey, with 76% being male and 23% being female (1% of respondents chose not to reveal their gender). The sample was also overwhelmingly Caucasian (97%), with only 3 African-American respondents, 2 Hispanic or Latino respondents, and 2 who did not choose to reveal their racial or ethnic background. The median age of respondents was 47 years; 70% of respondents were over 40 years old.

The median number of years since receiving a law degree was 19 years, with 27% receiving it less than 10 years ago, 28% between 11 and 20 years ago, 29% between 21 and 30 years ago, 11% between 31 and 40 years ago, and 5% more than 40 years ago. A slight majority of respondents (51%) had served in their current positions for less than 10 years; the mean length of time in current position was 13.6 years and the median was 10 years. Most respondents have frequent contact with Indiana courts, with 74% reporting that they had appeared in a courtroom or in chambers in the past month, and 52% reporting that they had appeared four or more times in the past month.

A majority of respondents reported that their current position was in private practice (71%); followed by 7% in prosecution and 3% in both public defense and government agencies. Respondents were also asked to describe their work in the courts prior to their current position. Responses to this question were somewhat more varied. Thirty-four percent gave no answer or indicated that they had had no prior work experience with the courts. Twenty-three percent of respondents mentioned general private practice; 15% mentioned prosecution; 10% cited experience as a law clerk for a judge, and 10% cited general litigation experience. Other types of experience mentioned included many specific areas of law, such as criminal defense, family court, or civil litigation.

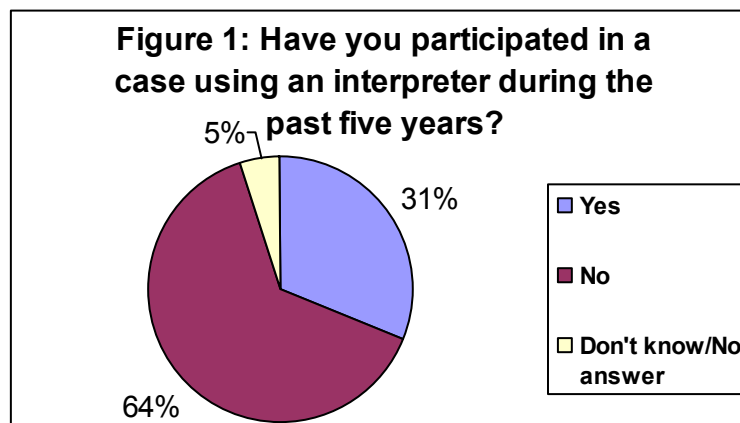
#### **Main Findings**

The questionnaire addressed several main topics dealing with gender, racial, and ethnic equity in Indiana courts. Major topics covered were the use of interpreters for non-English speaking litigants, gender- and race-based harassment of individuals in court, race and gender equity in jury selection, and the impact of race and gender bias on the outcomes of court cases. These major topic areas will be addressed in turn in this

discussion of the main findings of the survey of Indiana attorneys. This section will address the most salient findings of the survey, but full distributions of responses to all items in the questionnaire may be found in Appendix C: Full Marginal Tabulations.

## **I. Use of interpreters in court**

Almost one third of respondents (31%) reported that during the past five years they had taken part in a case in which an interpreter was used to aid non-English speaking persons. Of this 31% who had taken part in an case in which an interpreter was used, 66% reported that they had taken part in such a case at least once during the past six months; many had taken part in multiple interpreted cases. The median number of times that respondents had participated in such a case in the last six months was one<sup>1</sup>.



By far the most common language interpreted was Spanish, mentioned by 87% of those who had participated in an interpreted case during the past five years. A variety of other languages were mentioned by small minorities of respondents. For example, seven respondents had participated in a case translated into American Sign Language, and six had participated in a case translated into Chinese.

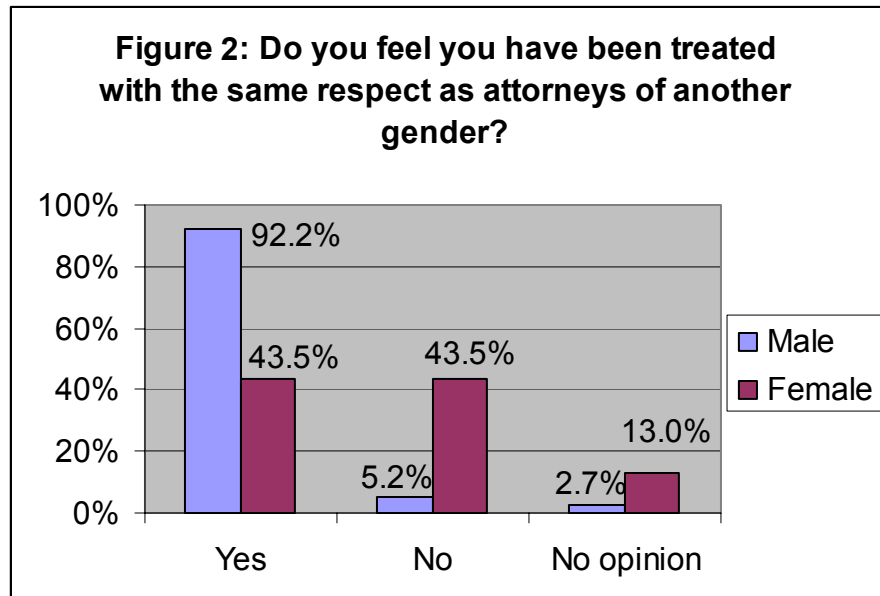
Most respondents who have taken part in such cases are satisfied with the quality of court interpretation in Indiana. Eighty-six percent of those who had experience with court interpretation agreed with the statement “Court interpreters are or have been fluent in both English and the interpreted language.” However, some problems appeared in questions regarding difficulties with obtaining court interpretation. A significant minority of respondents (13%) had taken part in a case where the judge was unable to obtain an interpreter when one was needed. Most of these respondents (58%) indicated that they had experienced this problem one to three times. The main reason cited for the problem was “overcommitted or unavailable interpreters” (16 respondents). The most common solution was postponing the proceeding until an interpreter could be obtained; however, other respondents said that friends, family members, or lawyers of the defendant had been allowed to interpret in lieu of a neutral court interpreter.

## **II. Harassment based on gender or race**

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<sup>1</sup> One respondent said he had participated in 50 such cases; another reported 30. However, all other responses were less than 20, and the majority were less than 3.

The next major topic addressed by the questionnaire was the incidence of gender- and race-based harassment of court participants by court employees and judges. With regard to gender, most respondents (81%) felt that they “have been treated with the same amount of respect as attorneys of another gender” in Indiana courts. However, male and female respondents differed sharply in their response to this question. While 92% of males believed they had been treated with equal respect, only 44% of women agreed with this statement. This relationship is statistically significant and moderately strong, with a probability of chance at the .001 level and Tau B at .51<sup>2</sup>. The chart below illustrates this finding.



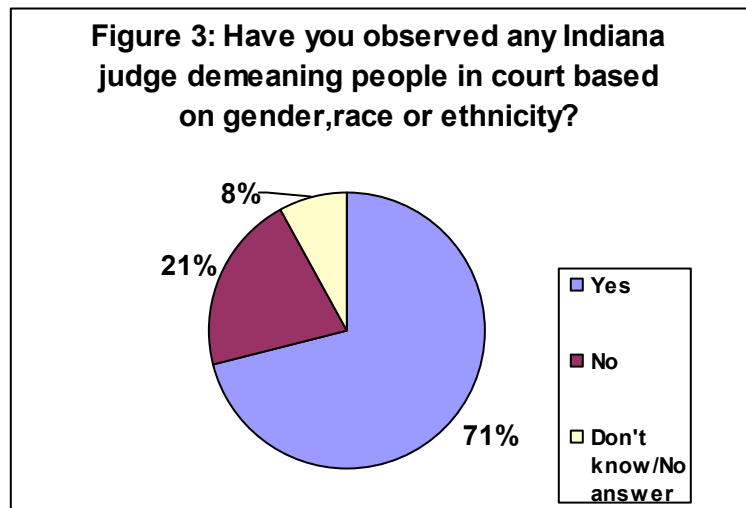
A similar pattern may appear in response to the question, “In your experience with Indiana courts, would you agree that you have been treated with the same amount of respect as attorneys of another race or ethnicity?” Looking at the overall sample, 90% of respondents agreed. When responses were broken down by respondent’s race or ethnic identity, the beginnings of a pattern of Caucasians agreeing more often than members of minorities appeared. However, as noted in the description of the respondent population, our sample included so few minority respondents that it is impossible to determine whether this hypothetical relationship is statistically significant.

In addition to considering the respect or disrespect they had personally experienced, we also asked the attorneys about gender- and race-based harassment they may have observed in court. First, we asked about harassment by judges. Twenty-one percent of respondents reported that they had observed an Indiana judge speaking or acting in a demeaning or disparaging manner toward any person based on gender, race, or ethnicity. When asked to explain their observations, most respondents gave a general comment that a judge had displayed race or gender bias (8%) or had made demeaning

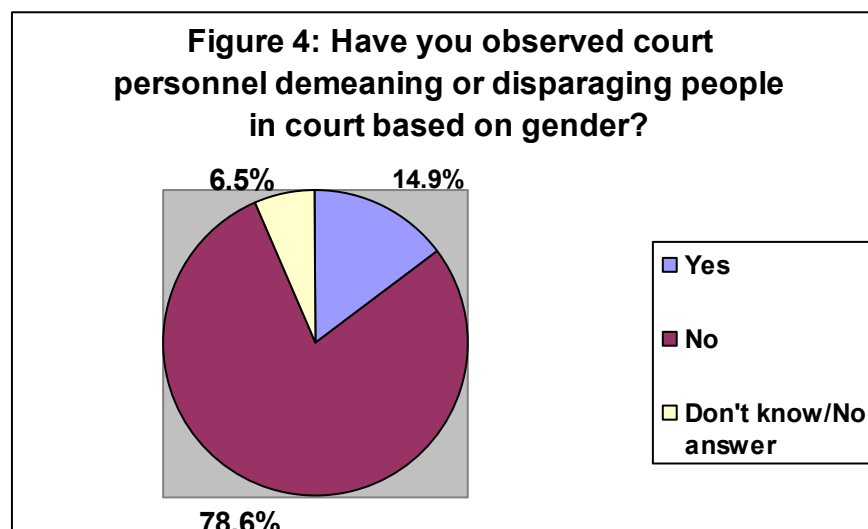
<sup>2</sup> Tau is a measure of association that indicates the proportional reduction in error when the independent variable is known. Lambda, a more conservative measure of association, was at .30 in this instance.



remarks about females, especially female attorneys (8.5%). Figure 3, below, illustrates these findings.



We also asked more generally about observations of court personnel (judges, court security officers, and other court employees) demeaning or disparaging people in court based on gender and race. First, approximately 15% of respondents reported that they had observed demeaning or disparaging treatment based on gender.



Of those respondents who had observed such behavior, over three quarters (77%) said they had observed judges engaging in gender-based disparagement. Smaller numbers observed such behavior on the part of court employees (43%) and court security officers (17%). The behavior was most commonly reported to be directed at non-minority females (87%), followed by minority females (37%). The types of court participants to whom the harassment was directed were most commonly litigants (63%) and witnesses (47%). Over 83% of respondents who observed gender-based harassment in court indicated that they had observed it “somewhat infrequently” or “very infrequently,” with 13% reporting it

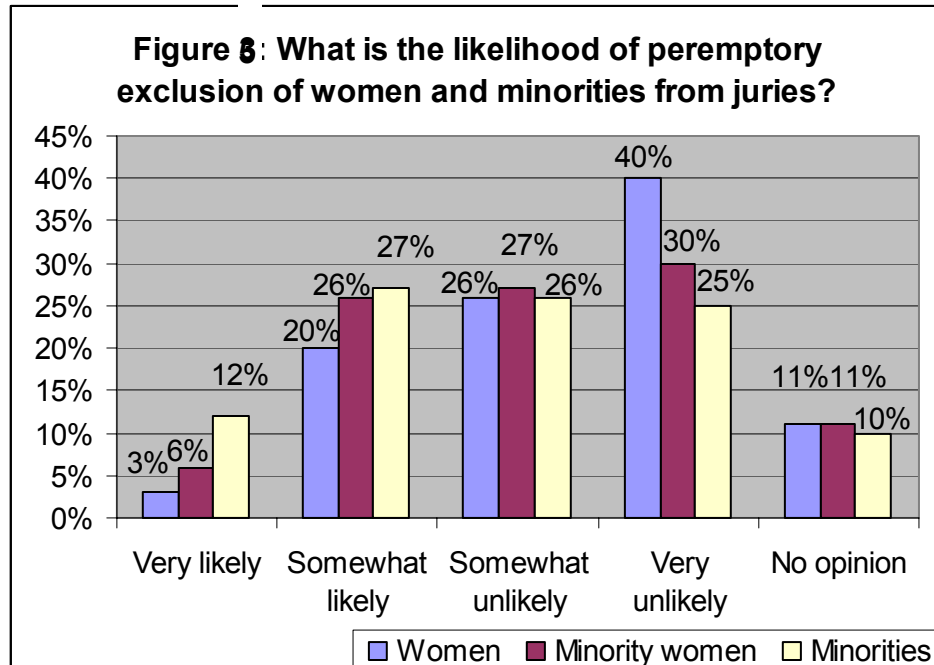
“somewhat frequently.” There was a modest but statistically significant relationship between respondent’s gender and observation of gender-based harassment (.05 level of significance; contingency coefficient .25).

With regard to demeaning or disparaging treatment based on race or ethnicity, slightly fewer respondents (10%) reported having observed such behavior in court. Again, judges were the most commonly observed harassers (65% of respondents who observed race-based harassment), followed by court employees (60%). The behavior was most commonly observed to be directed at minority males (90%), followed by minority females (75%). As with gender-based harassment, respondents most commonly noted race-based harassment of witnesses (75%) and litigants (70%). Most respondents who reported observing race-based harassment indicated that it occurred somewhat infrequently (45%) or very infrequently (35%).

### **III. Race and gender equity in jury selection**

Although constitutional law prohibits striking jurors on the basis of race or gender, many people feel that the unfounded exclusion of women and minorities from juries remains a problem. A minority of respondents (13%) reported that they were aware of or had observed situations in which gender or ethnicity has resulted in the unfounded exclusion of people from juries. These respondents commonly believed that prosecutors try to exclude persons of the same race as the defendant (5.5%), and that all types of attorneys attempt to exclude people based on race or gender for “tactical” reasons (3.5%).

Though only 13% of respondents reported having observed race- or gender-based exclusion from juries, many more respondents reported that they believe it was at least somewhat likely that such exclusions do occur. Specifically, 39% of respondents believed it is at least somewhat likely that racial or ethnic minorities will be excluded from juries based on their race or ethnicity. Twenty-three percent believed it is at least somewhat likely that women will be excluded based on their gender, and 31% believed it is very or somewhat likely that minority females will be excluded from juries more often than other members of the jury venire.



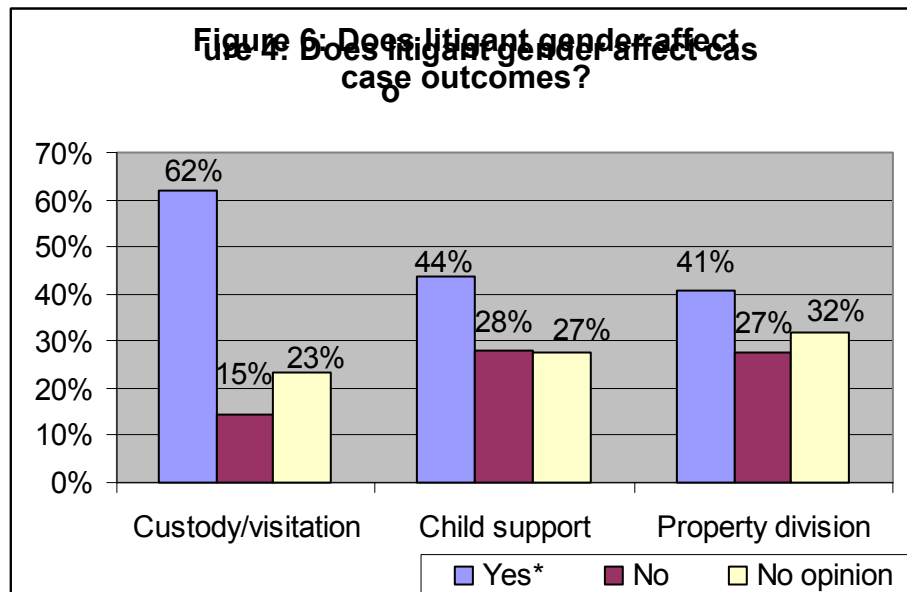
The disparity between the number of attorneys who said they have observed unfounded exclusion based on race or gender and those who said they believed race or gender based exclusion is likely suggests several paths of interpretation. First, the wording of the first question asked specifically about “unfounded” race and gender based exclusions, while the other series of questions asked simply about exclusions. Therefore, the difference may be based on respondents’ belief that race or gender based exclusions are not necessarily unfounded, and may be best for their client. Another valid interpretation would be that respondents believed exclusions occur, but have not had occasion to personally witness them.

#### IV. Impacts of race and gender on case outcomes

The questionnaire examined several areas in which race or gender bias may have an impact on the outcome of a case. To begin, 70% of attorneys surveyed indicated that they knew of an Indiana court case in which they believed the outcome was unjust. Only 10% of respondents believed that the injustice in case outcome was primarily due to race or gender bias. However, when we asked more specifically about certain types of cases, more respondents recalled an influence of gender on case outcomes, especially in family law.

Fully 62% of respondents believed it is very or somewhat likely that the gender of the litigants affects the outcome of custody and visitation cases. These respondents were asked to explain their response; forty-eight percent stated that mothers are commonly preferred for custody of children despite the gender-neutral language of the applicable statutes. Forty-three percent believed that child support awards and enforcement are affected by gender, and 41% believed decrees dividing marital property are also affected

by gender. A smaller percentage (24%) believed that the gender of the judge has an impact on the outcomes of child support and marital property division cases.



\*For custody and visitation, “yes” reflects an answer of “very likely” or “somewhat likely.”

## **Conclusions**

Overall, 64% of respondents felt that courts in their county are fair with regard to gender, race and ethnicity issues; an additional 22% had no opinion on the matter. However, responses to other items reveal that the attorneys surveyed are aware of several problems related to race and gender fairness in the Indiana courts. First, a majority of respondents felt that gender had an impact on the outcomes of certain family law issues, particularly custody decisions. Even though statutes have been changed to reflect a requirement of gender-neutral consideration, attorneys continue to perceive a bias in favor of mothers and a more stringent burden of proof for fathers than for mothers. Second, a significant minority of respondents believed that race and gender are likely to affect the selection of jury members. Finally, a significant minority also believed that, as attorneys, they have not been treated with the same amount of respect as others of another race or gender. Many of these perceptions were more common among women and minorities, reflecting a heightened awareness of race and gender based injustice in these populations.

Although the numbers of attorneys perceiving problems with race and gender equity in the courts was variable and sometimes quite low, this cannot be construed to reflect the true extent of fairness or unfairness in Indiana courts. Rather, this information reflects only the perceptions, beliefs, and attitudes of a sample of attorneys. These attorneys may or may not be aware of the actual extent of bias or fairness in our courts.

## **B. Survey of Court Employees**

### **Demographics**

The Indiana University Public Opinion Laboratory received 240 completed questionnaires from employees of Indiana courts. Understanding the demographic characteristics of these respondents will help in interpreting their responses. A large majority of the respondents were women (83%). The majority were also Caucasian (87%), with 7% being African American, 2% Hispanic or Latino, 2% Native American, and 2% listing another race or no race or ethnicity. The median age of respondents was 47 years. Most respondents (72%) have completed trade school or attended at least “some college.” Twenty-five percent listed a high school diploma as their level of education; 29% held a bachelor’s degree or higher degree.

Respondents held a variety of positions within the court system. The most common position was court reporter, held by 38% of respondents. This was followed by bailiff (20%), administrative assistant/secretary (11%), and clerk (8%). A full listing of positions held by respondents is available in Appendix C. A majority of respondents have held their current positions for five years or less (59%). Another 35% had held their position for six to twenty years, and 6% for more than twenty years. Many court employees had held other positions in Indiana courts prior to their current position. Forty-five percent have been court employees for five years or less; 45% for six to twenty years, and 11% for more than twenty years. Prior positions in the court were many and varied, but the top prior positions were clerk/clerk’s office (20%), bailiff (10%), and court reporter (9%).

### **Main Findings**

The questionnaire examined several major topics related to race and gender equity in the Indiana courts. Main topics included use of court interpreters, jury selection, harassment based on race and gender, effects of race and gender bias on case outcomes, and court employment policies. These topic areas will be discussed in the following discussion of the main findings of the survey. This discussion will describe the most prominent results; full data on all questions in the survey instrument are available in Appendix C: Full Marginal Tabulations.

#### **I. Court interpreters**

Eighty percent of respondents have observed or had contact with court interpreters at some time in their capacity as court employees. While some employees indicated that they have had contact with court interpreters nearly every day, the overall median number of contacts within the last six months was five. The most common language interpreted was Spanish, mentioned by 92% of those who have had contact with court interpreters. This was followed by American Sign Language, mentioned by 29% of respondents.

Few respondents reported that they themselves are fluent in a language other than English (2.5%). More respondents indicated that at least one employee of the court in

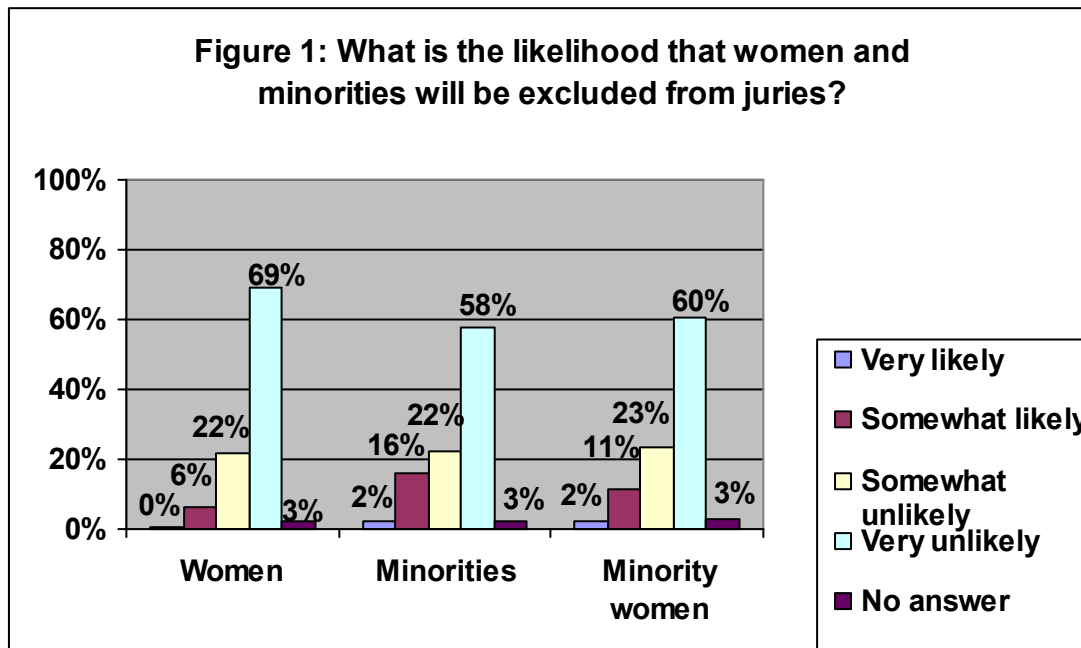


which they work is fluent in a foreign language (22%). However, a majority of respondents either gave no answer or said that no employees in their court are fluent.

Those who had had contact with court interpreters were generally satisfied with the quality of court interpretation. Over 92% of these respondents agreed with the statement, “Court interpreters are or have been fluent in both English and the interpreted language.” Furthermore, 95% of respondents who had contact with interpreters indicated that they believed the court in which they work is effective and fair with regard to the use of court interpreters.

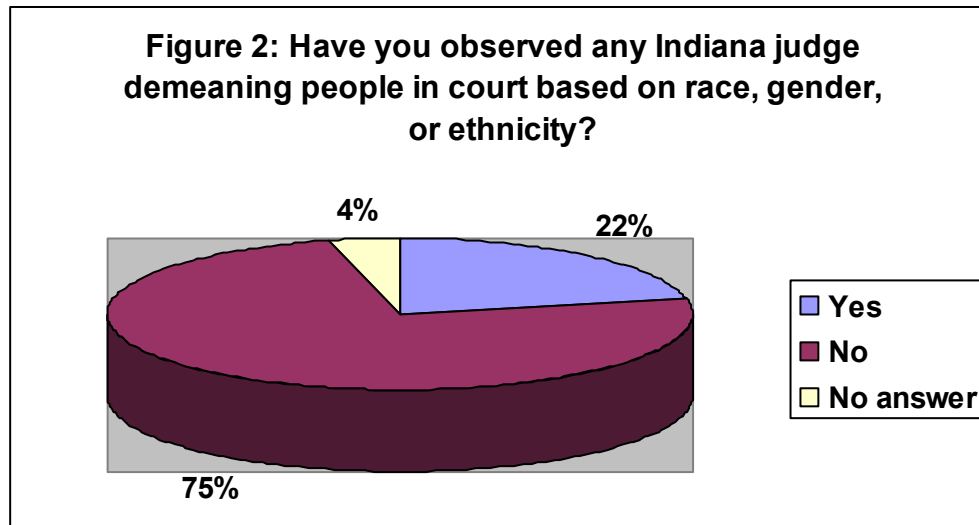
## II. Jury selection

The next main topic area covered by the questionnaire was race, ethnicity, and gender bias in jury selection. We asked several questions aimed at assessing respondents’ opinions on the likelihood that women and minorities would be excluded from jury panels on the basis of their race, ethnicity, or gender. Just 5% of respondents reported that they are aware of a situation where gender, racial, or ethnic bias resulted in the unfounded exclusion of people from juries. Furthermore, the majority of court employees felt that such exclusions were unlikely for both females and minorities. Eighteen percent felt that it was somewhat likely or very likely that racial or ethnic minorities would be excluded on the basis of their race or ethnicity; 13% felt that it was somewhat or very likely that minority females would be excluded on the basis of race or gender; and 7% felt it was somewhat or very likely that females would be excluded on the basis of their gender. The chart below illustrates these findings.



## III. Harassment based on race and gender

The questionnaire examined several dimensions of gender- and race-based harassment in the courts. First, we asked about respondents' personal experience of harassment in Indiana courts. A large majority of respondents (96%) said that they feel they have been treated with the same amount of respect as court employees of another race or ethnicity. Slightly fewer respondents (88%) said that they had been treated with the same amount of respect as court employees of another gender. We also asked, "Have you observed any Indiana judge who speaks or acts in a demeaning or disparaging manner toward any person based on gender, race, or ethnicity?" Most respondents (75%) said no, while 22% said yes and 4% gave no answer.



Next, we asked about demeaning or disparaging treatment based on gender or race more generally. We asked whether respondents had observed such behavior, who had engaged in the behavior, and to whom the demeaning treatment had been directed. Twenty of respondents reported that they had observed or heard about court personnel demeaning or disparaging people on the basis of gender. Nearly 54% of respondents who had observed such gender-based harassment in court said that attorneys had demeaned or disparaged people based on gender. Judges were the next group most likely to be named as harassers by respondents who observed gender-based demeaning behavior (51%). Fewer respondents indicated that court security officers or court employees had engaged in this behavior (29% and 27% respectively). Respondents were most likely to observe gender-based demeaning treatment directed toward attorneys (54%), followed by court employees (47%). Smaller numbers reported harassment of judges (22%), witnesses (14%), litigants (28%), jurors (9%), and court security officers (9%). As might be expected, most respondents who observed gender-based harassment reported that it was directed against women (47% minority females; 77% non-minority females), although a significant minority reported harassment of males (26% non-minority males, 22% minority males).

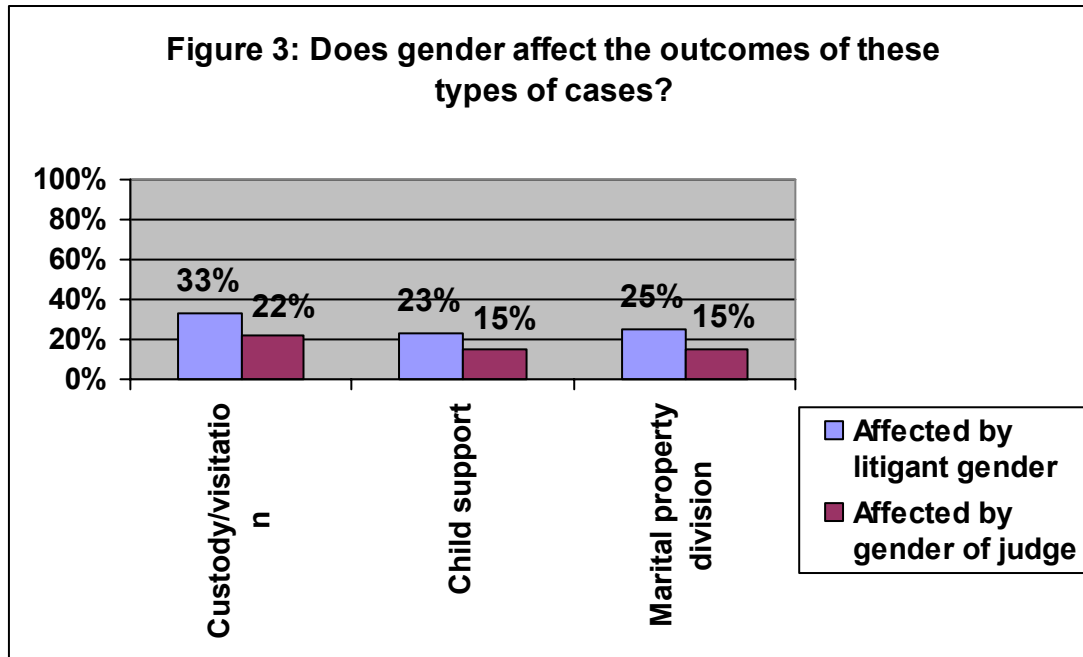
With regard to demeaning or disparaging treatment based on race or ethnicity, 12% of respondents reported witnessing or hearing about such behavior in court. Respondents who observed race-based demeaning behavior were most likely to name other court employees as the court personnel that engaged in this type of behavior (62%),

followed by attorneys (46%), court security officers (34%), and judges (26%). The behavior was most likely to be directed at litigants (69%). Minority males were the group most likely to be demeaned or disparaged on the basis of race or ethnicity; such treatment of minority males was reported by 79% of respondents who observed race-based harassment. Harassment of minority females was reported by 51% of these respondents.

#### **IV. Effects of race and gender on case outcomes**

Nearly 38% of respondents had observed an Indiana judicial proceeding the outcome of which they believed to be unjust. However, only 31% of these respondents believed that the injustice was due primarily to race, gender, or ethnicity. Specifically, 11% of those who observed an unjust outcome thought it was due primarily to gender; 9% believed the injustice was due primarily to ethnicity, and 12% believed injustice had been based on both gender and ethnicity.

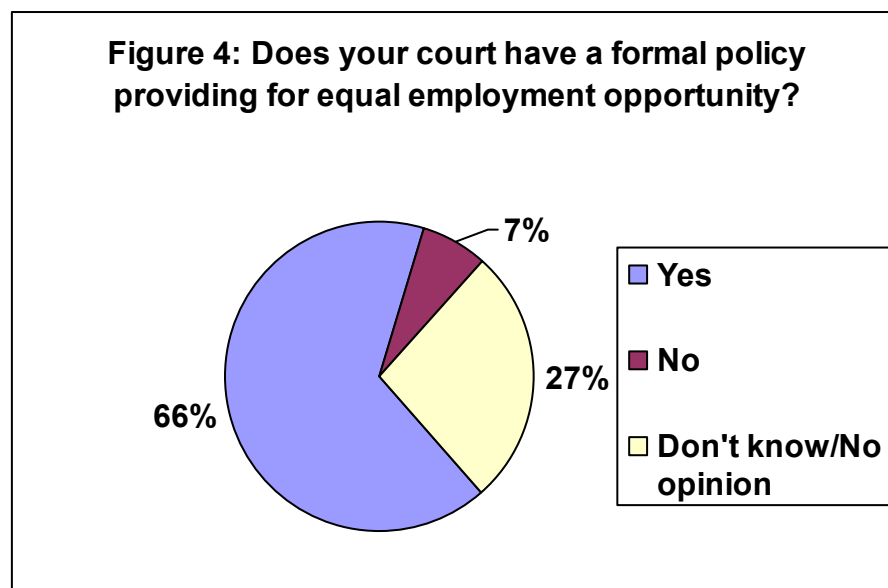
In several areas of law, particularly family law, the perception persists that women and men are treated unequally. The majority of court employees surveyed did not believe that such unequal treatment is prevalent. Sixty-two percent of respondents believed that it was somewhat or very unlikely that the gender of the litigants plays a role in custody and visitation cases. Twenty-six percent believed it was somewhat likely, and 8% believed it was very likely. Respondents were less likely to believe that the gender of the judge has an effect on custody or visitation issues. Seventy-three percent believed such an effect was very or somewhat unlikely, while 21% believed it was very or somewhat likely. Next, we asked about child support awards and enforcement of such awards. Twenty-three percent of respondents believed that, in general, these awards are affected by the gender of the litigants; fifteen percent believed they are affected by the gender of the judge. Finally, we asked about dissolution decrees dividing marital property. Compared to the other types of cases, more respondents (25%) believed the gender of the litigants affects the outcome of this type of case. Fifteen percent of respondents believed that the gender of the judge affects the outcome of marital property division cases. The chart below shows these findings and compares respondents' opinions across the different types of cases.



\*Note: For custody and visitation, responses of “very likely” and “somewhat likely” were counted as “affected.” For other items, “yes” was counted as “affected.”

## V. Court employment policies

The instrument included several basic items aimed at assessing Indiana courts’ employment policies as they affect race and gender fairness. First, 66% of respondents report that they are aware of a formal policy that provides for equal employment opportunity in their court. Of those who reported awareness of such a policy, 91% believe the policy is effectively enforced. The chart on the next page illustrates this finding.



Respondents were also asked whether their court has “a policy which specifically prohibits gender-based misconduct, including sexual harassment and gender discrimination.” Sixty-seven percent of respondents are aware of such a policy in their court. Nine percent did not believe that their court has such a policy, and 24% did not know or gave no answer. Of the sixty-seven percent of respondents who were aware of a policy prohibiting gender-based misconduct, 61% believed that the policy is effectively enforced in their court. Thirty-seven percent do not know or have no opinion on whether the policy is effectively enforced, and just 4% believe their court’s policy is not effectively enforced.

Finally, we asked, “Does your court post or advertise all job openings?” Fifty percent of respondents indicated that their court does post or advertise job openings. However, the true percentage of courts which post or advertise positions may be higher or lower, as 25% of respondents indicated that they do not know their court’s policy in this area. Another 25% reported that the court in which they work does not post positions.

## **Conclusions**

The court employees surveyed here do not seem to perceive a serious problem with race and gender equity in their courts. Overall, 95% of court employees surveyed said that they believe the court in which they work is fair without regard to gender or ethnicity factors. However, significant minorities of respondents did note some problems. For example, one in five respondents had observed gender-based harassment in court, most often on the part of judges and attorneys. Nearly as many had observed race-based harassment in Indiana courts.

Over one third of respondents did not report that their court has policies forbidding gender-based misconduct and requiring equal employment opportunity. This may reflect a lack of awareness on the part of employees rather than a lack of appropriate policies; however, employees are unlikely to understand and use their rights and responsibilities under a policy of which they are unaware.

Finally, 22% of respondents had observed an Indiana judge demeaning or disparaging people based on race, ethnicity, or gender; 12% had observed an outcome of an Indiana court proceeding which they believed was unjust due to race, gender, or ethnicity bias. Although these do not constitute majorities of the respondent population, even a lower number of employees reporting very serious problems may be cause for concern.

## C. Survey of Prosecutors

### The Sample

The Public Opinion Laboratory sent questionnaire packages to ninety-two Indiana prosecutors' offices. Each package contained five questionnaires accompanied by a letter which asked the recipient to distribute the questionnaires to practicing prosecutors or assistant prosecutors in the office. The laboratory received 117 completed questionnaires by the deadline of August 22, 2002. Understanding the characteristics of the population that responded will aid in interpreting the results of this survey.

The majority of respondents were male (73%), with 25% female and three respondents who chose not to reveal their gender. Most respondents (92%) identified themselves as Caucasian. There were also two respondents who identified as African American, two who identified as Hispanic or Latino, and one who identified as Asian American. Several respondents chose not to indicate their race or ethnic identity. The median age of respondents was forty-three years.

The prosecutors surveyed had received their law degrees between one and forty years ago; the median time since receiving the degree was 13.5 years. Respondents had served as prosecutors for between one and thirty-three years, with the median time as a prosecutor being eight years. The majority of respondents had appeared in a courtroom or in chambers more than ten times in the past month (85%). Nine percent had appeared seven to ten times, and five percent had appeared fewer than seven times. Respondents had held a variety of positions in court prior to their current positions. When asked to describe their prior work experience in the courts, respondents generally indicated either fields of law (such as civil law or criminal defense) or types of practice (private, public defense, etc.). The table below shows the top types of previous work experience mentioned by respondents. Up to three types of previous experience were coded for each respondent.

**Table 1: Prior work experience in the courts**

Type of prior experience	Percentage
General/private practice	31
Civil case work	27
Deputy prosecutor	18
Family law	15
Public defender	14
Trial work	9
Criminal defense	9

### Main Findings

This survey, like the others associated with this project, addressed several topics related to race and gender fairness in Indiana courts. These topics included court interpretation, jury selection, discrimination and harassment in court, and the effects of race and gender bias on case outcomes. The following sections will discuss the most

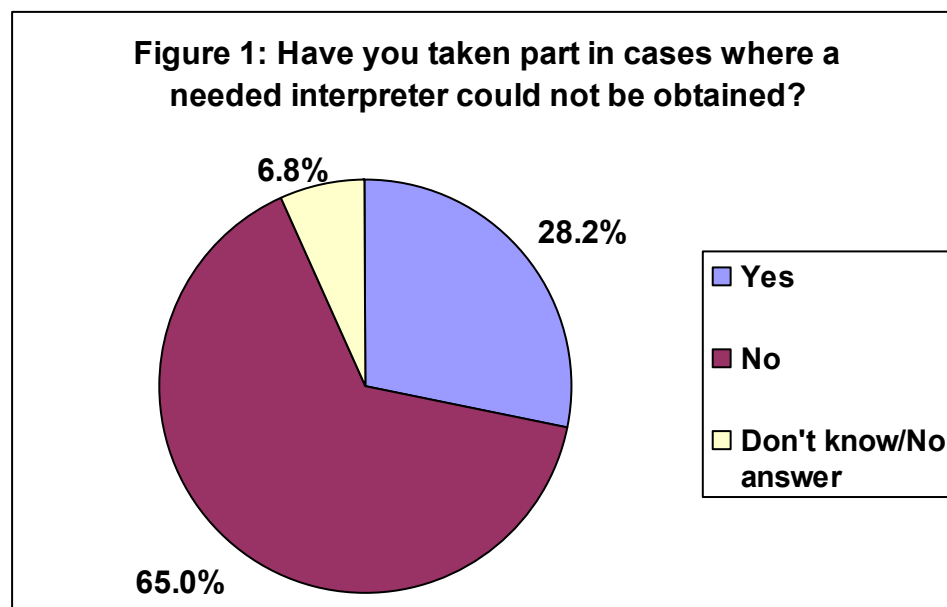


important findings of the survey in these areas. Full distributions for each item in the questionnaire are available in Appendix C: Full Marginal Tabulations.

### **I. Court interpretation**

A large majority of respondents (89%) indicated that they have taken part in a case in which a judge used an interpreter to aid non-English speaking litigants during the past five years. The frequency of respondents' experience with interpreted cases was varied, with some respondents reporting no such cases in the past six months and others reporting up to three hundred. However, the median number of times respondents had taken part in an interpreted case during the past six months was two; the mean was eleven. As might be expected from previous surveys, the major language interpreted was Spanish, mentioned by 88% of respondents. This was followed by American Sign Language (9%) and Chinese (5%).

The questionnaire also asked about potential problems with court interpretation. First, we asked, "Have you ever taken part in cases where a judge was unable to obtain an interpreter when one was needed?" Over one fourth of respondents had experienced this problem (28% -- see Figure 1 below). Sixty-seven percent of those who had taken part in a case where an interpreter could not be obtained said that this had happened one to three times during the past five years; 18% said four to six times, and 6% had experienced the problem seven or more times. Those respondents who had experienced this problem were asked, "What circumstances prevented the judge from obtaining a needed interpreter?" The most common response, mentioned by 79% of those who had experienced the problem, was that interpreters were simply unavailable at the time and place where they were needed. Other circumstances mentioned were lack of qualified individuals (15%) and insufficient advance notice (6%).



Most respondents who had taken part in a case in which an interpreter was unavailable reported that a judge had postponed the proceeding until an interpreter was available (91%). However, respondents indicated that judges had also allowed family members (48%) or friends of the defendant (48%) to interpret. Smaller percentages also

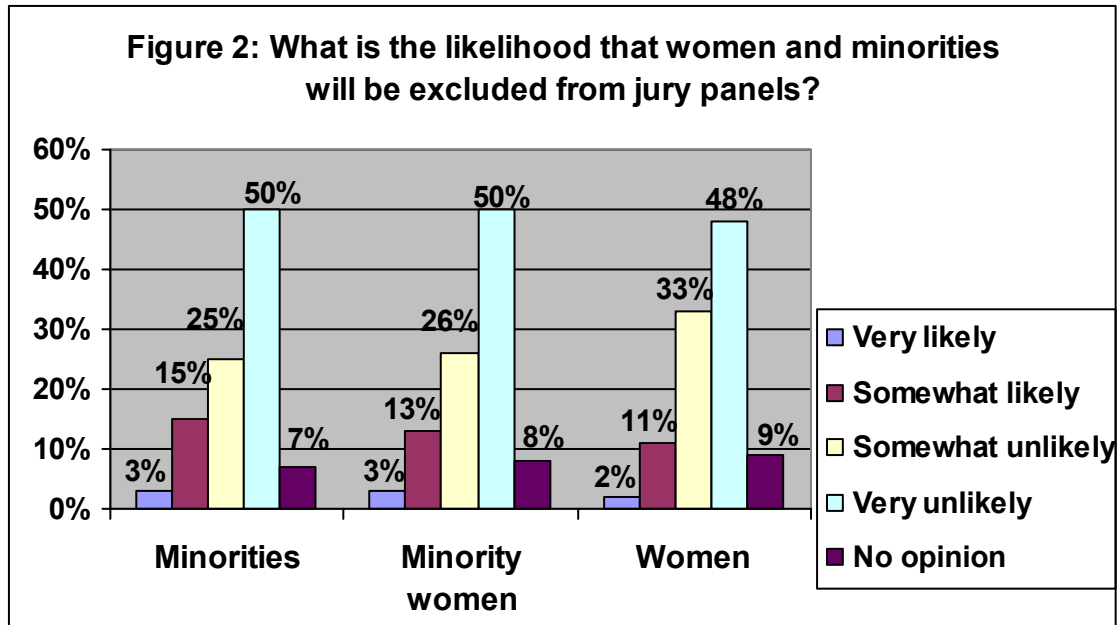
reported that bilingual counsel (18%), court personnel (6%) or another defendant (6%) had been allowed to interpret in a court proceeding when an official interpreter was unavailable. Despite these problems with availability, most respondents (77%) believed that court interpreters are generally fluent in both English and the interpreted language. Few respondents (6%) were fluent in a language other than English themselves.

## **II. Jury selection**

The jury selection section of the questionnaire was primarily concerned with the removal of individuals from jury panels based on their race, ethnicity, or gender. First, the questionnaire asked, “Are you aware of or have you observed any situations where gender or ethnicity has resulted in the unfounded exclusion of people from juries?” The majority of respondents (84%) said no, although a significant minority (10%) said yes. The remainder of respondents did not know or gave no answer on this issue.

Those respondents who said they were aware of such unfounded exclusions were asked to explain the situations they had observed. Although all these respondents gave unique explanations, several main themes were apparent. First, some respondents explained that jurors are perceived to be sympathetic to members of their own race or hostile to members of another race. Other respondents explained that women are excluded from cases which might be of special interest to women, such as domestic violence. Also, several respondents indicated that lawyers use race or gender based strikes not as a form of discrimination, but as an attempt to further their case or help their client.

The questionnaire also asked about the likelihood that minority, female, and minority female members of a jury panel will be struck on the basis of their race, ethnicity, or gender. Respondents were most likely to believe that members of racial or ethnic minorities would be struck on the basis of their race or ethnicity. However, the majority of respondents felt that such exclusions were very unlikely or somewhat likely for all three categories. The chart below shows these results, comparing them across categories.



### III. Discrimination and harassment in court

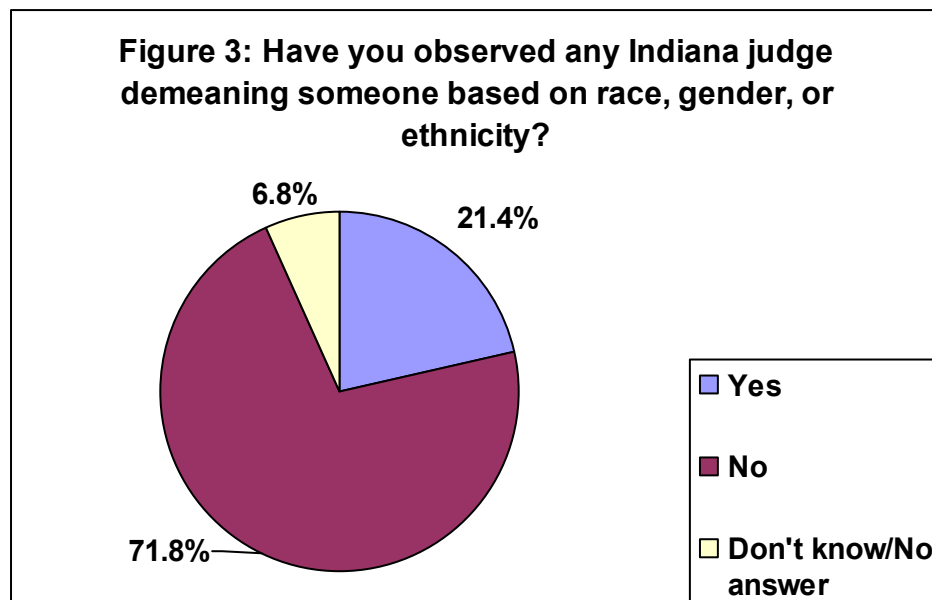
The section of the questionnaire focusing on harassment in court attempted to collect several types of information about race or gender based harassment observed by prosecutors in court. Respondents were asked whether they had observed such harassment, the position of the harasser, the position of the harassed individual, the gender and minority status of the harassed individual, and the frequency with which harassment was observed.

Fifteen respondents, or approximately 13%, reported that they have observed court personnel demeaning or disparaging people in court based on gender. The percentages in the following discussion of these findings will refer only to the group who had observed such demeaning treatment. Seventy-three percent of these respondents indicated that judges had been observed engaging in demeaning behavior. Fewer respondents (47%) said court employees had engaged in gender-based harassment, and one respondent said court security officers had done so. The observed behavior was most likely to be directed at non-minority females (86%), though some respondents did note gender based harassment of minority females (27%), minority males (20%) and non-minority males (13%). According to respondents' observations, litigants were the type of court participant most likely to be demeaned or disparaged based on gender (73%), followed by witnesses (27%) and jurors (20%). Most respondents who observed gender-based demeaning treatment said that they had observed the behavior somewhat or very infrequently (80%); three respondents had observed it somewhat or very frequently.

Next, the survey asked the same set of questions with regard to harassment based on race or ethnicity. Eleven respondents, or 9%, said that they had observed court personnel demeaning or disparaging people in court based on race or ethnicity (percentages in the following discussion refer only to this group). As with gender-based harassment, judges were most likely to be observed engaging in race-based demeaning

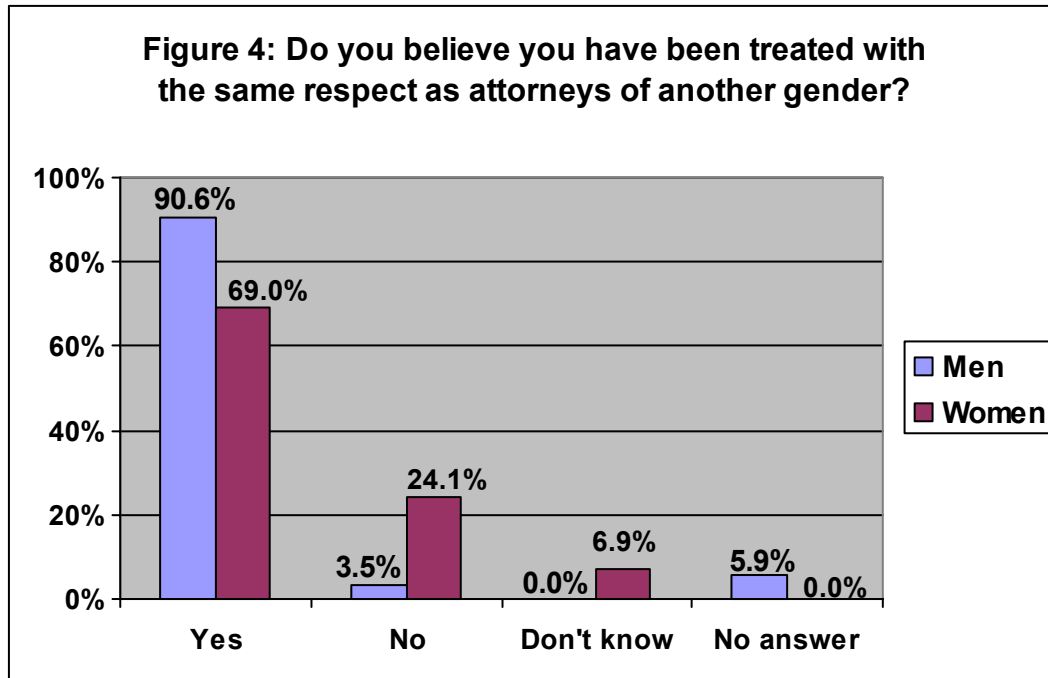
treatment (82%), although disparagement by court employees (55%) and court security officers (45%) were also observed. All eleven respondents reported that minority males had been demeaned on the basis of race; 64% said minority females had been harassed, and one respondent reported observing race-based harassment of non-minority females. Race-based harassment was most commonly reported to be directed at litigants (82%) and witnesses (36%). The majority of respondents who had observed race-based harassment said it occurred somewhat or very infrequently (82%), while two respondents said it occurred somewhat frequently.

In addition to these general observations about the type and frequency of demeaning behavior in court, respondents were asked specifically about whether they had observed Indiana judges demeaning or disparaging people in court based on race, gender, or ethnicity. The majority of respondents (72%) had not observed such behavior on the part of judges; however, 21% indicated that they had observed it.



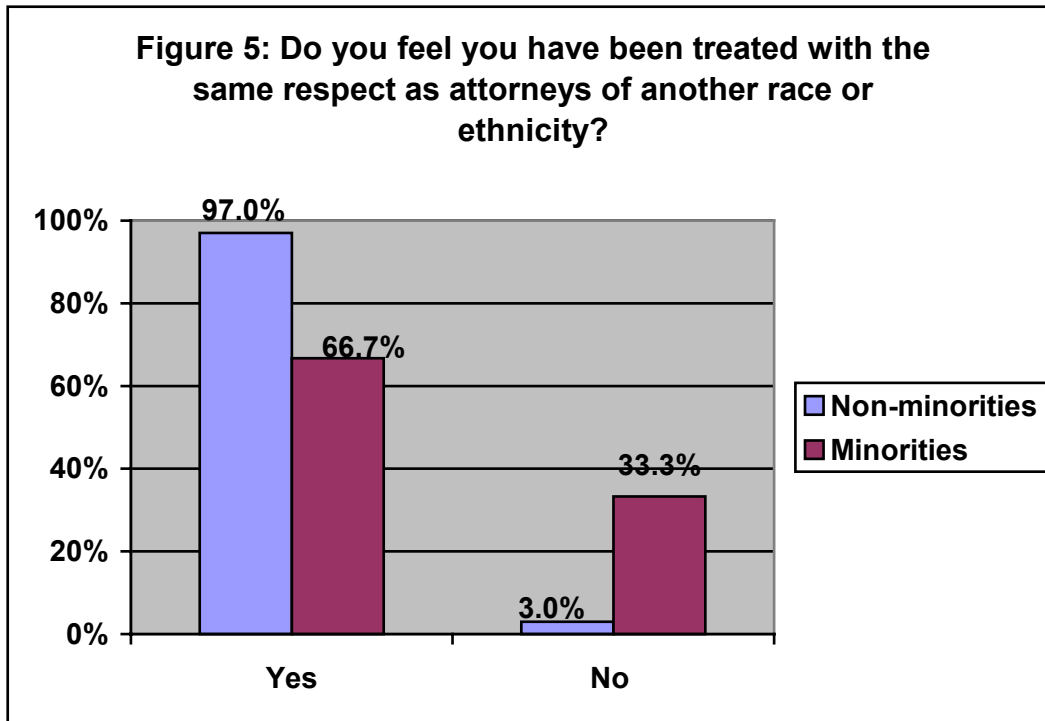
Respondents who said yes were asked to describe the behavior they had observed. The most common response, given by six respondents, was that a judge treated women employees or women attorneys disrespectfully. Two respondents reported that judges were demeaning with regard to race and gender in general. All other comments were unique, generally referring to specific comments or incidents of harassment.

Most respondents felt that they personally had been treated with respect in court. Eighty-four percent of respondents believed that they have been treated with the same amount of respect as attorneys of another gender, and 88% felt that they have been treated with the same amount of respect as attorneys of another race or ethnicity. However, women were less likely than men to feel that they had been treated with the same respect as another gender, and minorities were less likely than non-minorities to feel they had been treated with the same respect as members of another race. The charts on the next page illustrate these findings.



The association between respondents' gender and the response to this item was statistically significant at the .001 level. This means that there is less than a 0.1% chance that the differences between men's and women's answers were caused by sampling errors. The association was modest, with a Kendall's Tau value of 0.33. This means that knowing the gender of a respondent leads to a 33% reduction in errors in predicting the answer to the item.

Since the number of members of racial and ethnic minorities who responded to the survey was low, associations in this area are more difficult to validate statistically. However, the results do seem to show the same type of pattern as with gender-based harassment.



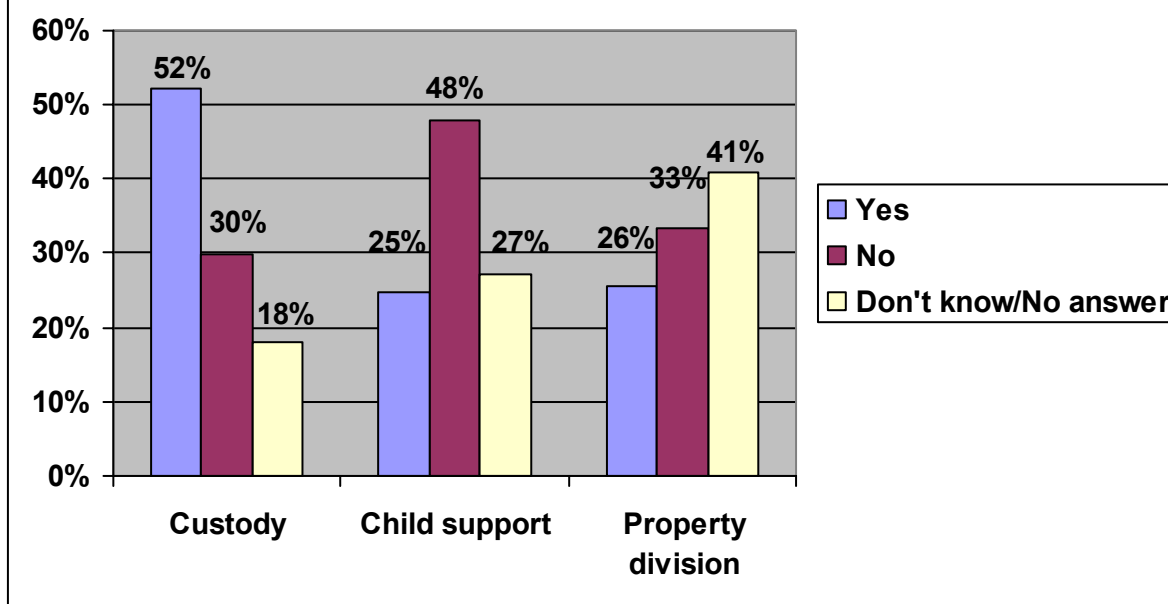
Note: To facilitate analysis, this chart excludes 11 cases answering “don’t know” or “no answer.” The association illustrated in this chart is significant at the .001 level and has a Kendall’s Tau value of .33 (see interpretation on previous page).

#### **IV. Effects of race and gender bias on case outcomes**

There are several areas of family law in which there is concern that gender bias plays a role. A majority of attorneys share this concern in the area of custody. Fifty-two percent of respondents said that it is very or somewhat likely that the gender of the litigants plays a role in custody and visitation issues. These respondents were asked to explain their views. The most common response was that mothers get custody as a presumption, mentioned by 29% of respondents. Nearly all comments on this topic indicated that women are favored in all or some types of custody and visitation issues. Fewer respondents (25%) believed that child support decisions are generally affected by the gender of the litigants, and twenty-six percent believed the gender of the litigants affects decrees dividing marital property. Furthermore, 20% of respondents believe that the gender of the judge affects the outcomes of child support and marital property cases.



**Figure 6: Are family law cases affected by the gender of the litigant?**



In addition to family law, we also addressed possible problems with race and gender bias in plea bargaining and appointment of counsel for indigent defendants. Most prosecutors surveyed did not feel that there are significant problems with race and gender fairness in these areas. Eighty-four percent of respondents believed that racial or ethnic minorities receive equal treatment with other defendants in plea bargaining. Twelve percent did not know or gave no answer, and three percent of respondents believed that minorities do not receive equal treatment. Those who felt there was unfairness were invited to comment; four chose to do so. Three comments addressed problems faced by Spanish-speaking defendants, who may not have access to treatment and diversion programs or who cannot communicate with attorneys. With regard to appointment of counsel, 97% of respondents believe that the process is fair without regard to gender or ethnicity factors. Two respondents commented on unfairness in the process, one referring to a language barrier between attorney and client and one citing a lack of understanding based on gender differences.

### **Conclusions**

Overall, 80% of respondents reported that they believe the courts in their county are fair regardless of gender or ethnicity factors. All respondents were invited to make additional comments about the topics addressed in the survey; up to three comments were accepted from each respondent. The most common comments referred to the idea that race and gender inequity is not a serious problem in the respondent's view. These comments included "My area has a very small minority population" (6 respondents), "I have been treated fairly" (5 respondents), and "(Race and gender equity is) not a problem

in courts where I practice” (5 respondents). See Appendix C for a full listing of respondents’ additional comments. Despite these comments which would tend to minimize the effects of race and gender bias in Indiana courts, several problems were identified by many respondents.

One of the problems most commonly reported by the prosecutors surveyed was gender bias in family law proceedings. Over half of respondents believed it was likely that custody and visitation would be affected by the gender of the litigants, with most of these explaining that they felt there is some bias in favor of women. Between twenty and twenty-five percent also felt that gender was likely to affect child support and marital property division.

Nearly thirty percent of respondents said that they had taken part in a proceeding for which an interpreter was needed but could not be obtained, making this another of the most common problems reported by respondents. Several additional comments also related to the issue of language barriers, such as “(Courts) need more Spanish-speaking public defenders,” “Hispanics are treated unfairly by our justice system,” and “Court system should provide language lessons to judges and prosecutors.”

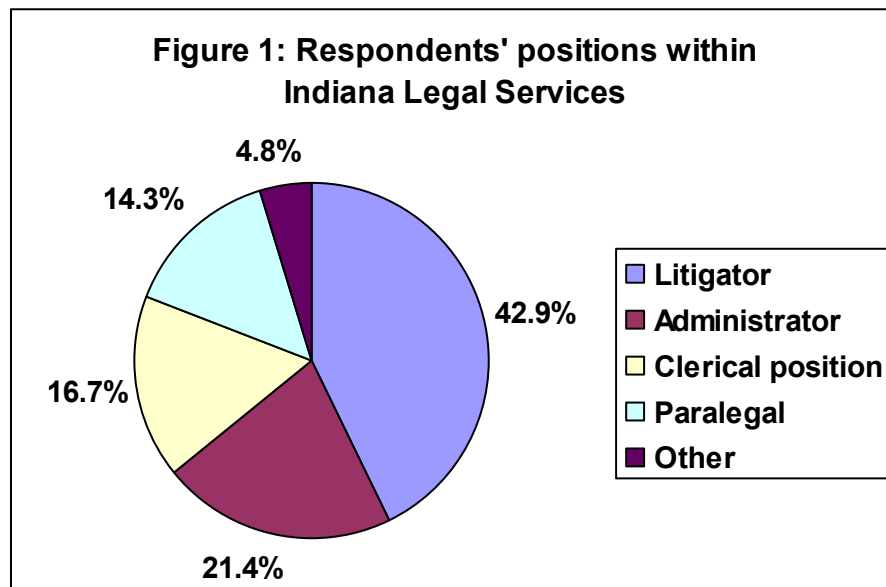
As in the other surveys in this project, females and minorities seemed to be more sensitive to problems with race and gender equity than males and non-minorities. This was especially true in regard to questions about the treatment respondents themselves had received in courts. In all, though most respondents expressed a belief that the problem of gender and race inequity in Indiana courts is minimal, significant percentages showed awareness of serious problems with ethnic and gender bias affecting justice for Indiana citizens.

## D. Survey of Legal Service Providers

### Demographics

The Public Opinion Laboratory mailed questionnaires to all employees of Indiana Legal Services, Incorporated listed on the Indiana Justice Center web site ([www.indianajustice.org](http://www.indianajustice.org)). A total of one hundred thirty-nine questionnaires were distributed on July 19, 2002. After two weeks, a reminder postcard was mailed to each employee who had not yet returned a questionnaire. Forty-two completed questionnaires were returned by the deadline of August 22, 2002.

Because questionnaires were mailed to all known employees of Indiana Legal Services, respondents held a variety of positions within the organization. The most common position was litigator (43%), followed by administrator (21%). Figure 1 below shows the distribution of positions held by respondents.



We asked, “How many attorneys are partners or employees of your organization?” Respondents tended to understand this question in two different ways. Some answered for Indiana Legal Services as a whole, leading to 21% who said there are more than fifty attorneys in their organizations. Others answered only for their particular office. Twenty-nine percent of respondents reported one to five attorneys; 24% reported six to ten, 10% reported eleven to twenty-five, and 12% reported twenty-six to fifty attorneys.

The questionnaire also asked whether respondents’ organizations specialize in a particular area of law. Some respondents (36%) described the general specialty of poverty law or legal services. Others indicated a particular specialty within Indiana Legal Services. Four respondents said that their office specializes in family law, and one specialized in immigration. The majority of respondents (71%) said that representatives of their organization have appeared in a courtroom or in chambers more than ten times in the past month, followed by 10% who said a representative had appeared between seven

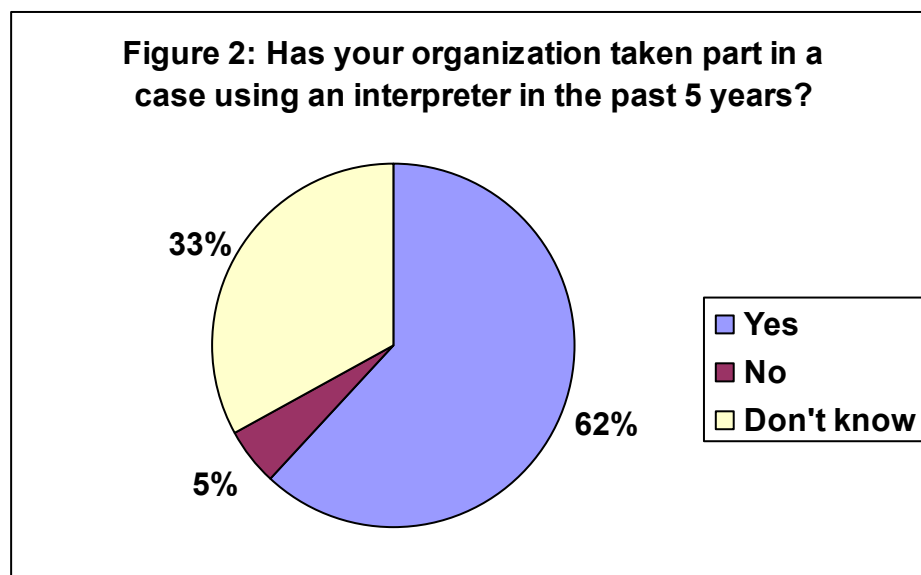
and ten times. The unit of analysis for this survey was the organization itself rather than individual employees, so individual demographic data on respondents was not collected.

## **Main Findings**

Since the survey of legal service providers addressed the organization as a whole rather than individual experiences, fewer topic areas were investigated in this survey than in the surveys of other court participants. The main topics covered were as follows: court interpretation, employment policies, and representation of women and minorities by Indiana Legal Services. The following discussion of the main findings will cover each of these areas.

### **I. Court interpretation**

With regard to court interpreters, 62% of respondents reported that their organization has presented cases using interpreters for non-English speakers during the past five years; 5% reported no such cases, and 33% did not know whether their organization had handled such a case (see Figure 2 below for an illustration of these findings). The 62% of respondents who did report an interpreted case were asked to estimate how many such cases their organization had handled during the past six months. Of this group, 54% reported one to five interpreted cases in the past six months; 12% reported six to ten cases; zero and more than ten cases were each reported by one respondent. The language most often interpreted was Spanish, which was mentioned by 73% of respondents whose organizations had taken part in a case where an interpreter was used. This was followed by American Sign Language (15%) and Russian (12%).

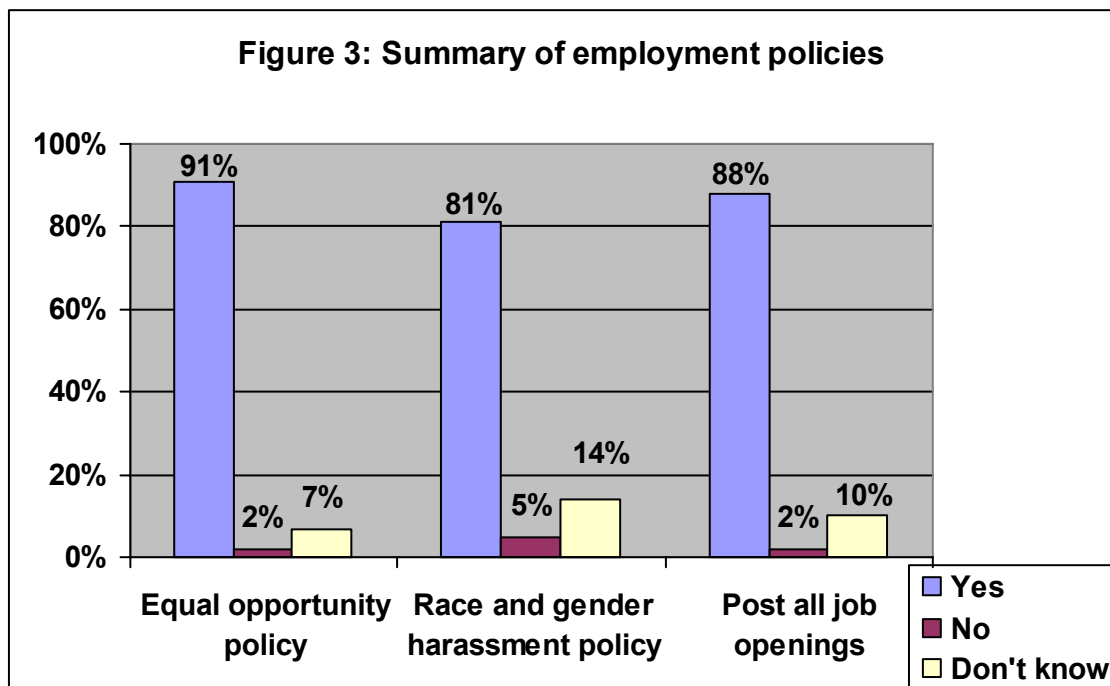


Twenty-six percent of respondents indicated that their organization had taken part in a case where a judge was unable to obtain a needed interpreter. Forty-five percent of these respondents said this problem had arisen one to three times during the past five years; 18% said four to six times; 18% said six to ten times, and one respondent said it

had happened more than ten times during the past five years. Most legal service offices have some resources to deal with this problem, as 88% of respondents report that their organization currently employs legal service providers who are fluent in a language other than English.

## II. Employment policies

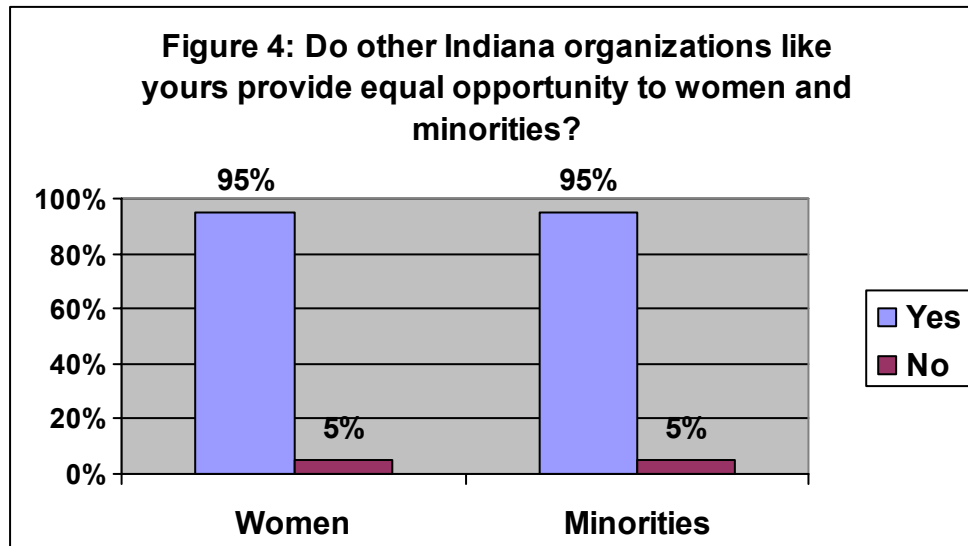
The next section of the questionnaire addressed the employment policies of Indiana legal service providers, especially those related to opportunities for women and members of racial or ethnic minorities. Over 90% of respondents were aware that their organization has a formal policy providing for equal employment opportunity; 7% did not know, and one respondent believed their organization does not have an equal opportunity policy. Furthermore, 81% of respondents are aware of a policy in their organization that prohibits harassment and discrimination against women and minority employees. Fourteen percent of respondents either did not know or gave no answer as to whether their organization has a policy prohibiting harassment; just 5% believed their organization does not have such a policy. Most respondents (88%) also reported that their organization posts or advertises all job openings, 2% reported that their organization does not post or advertise positions, and 10% did not know.



Respondents were asked how many women and how many members of racial or ethnic minorities are employed as attorneys in their organizations. These numbers were compared with the total number of attorneys provided by respondents in an earlier item to give an approximate percentage of women and minorities employed. A majority of respondents' answers (70%) indicated that approximately 45% to 55% of attorneys in their organizations are female. Representation of minorities was not as positive, with 36% of respondents indicating that no attorneys employed by their organization are members

of racial or ethnic minorities. Nineteen percent of respondents indicated that 5% to 15% of attorneys employed in their organizations were members of minorities.

We next asked, “In general, do other Indiana organizations like yours provide equal opportunity for hiring and promotion to members of racial or ethnic minorities?” A majority of respondents (55%) replied that they did not know<sup>3</sup>. However, among those who did offer an opinion, 95% believed that equal opportunity for minorities is provided. Similarly, although half of respondents did not give an opinion on whether Indiana legal service providers provide equal opportunity to women, 95% of those who did give an opinion felt that equal opportunity for women is provided.



Note: Those answering “don’t know” or “no answer” were excluded from this analysis.

### III. Representation of women and minorities

A large majority of respondents said that their organizations provide legal services very frequently or somewhat frequently to both women (95%) and racial or ethnic minorities (98%). Furthermore, 91% of those respondents who expressed an opinion on the issue believed that “other Indiana organizations like [theirs] generally provide an equal level of service and representation to females and minorities.” Just two respondents believed that other organizations do not provide equal service. Finally, 65% of those who expressed an opinion on the matter believed that Indiana legal service organizations like their own advance fairness and equity for minority members and women. Thirty-five percent believed such organizations neither advance nor hinder fairness, and no respondents believed that such organizations hinder fairness.

<sup>3</sup> Several items on the questionnaire, concerning both employment policies and representation of women and minorities, asked respondents to consider other Indiana legal service providers or organizations “like their own.” This question format is used because it may increase the accuracy of responses to items that involve illegal or undesirable behaviors such as racial or gender discrimination. The disadvantage of this type of question is that respondents may not feel competent to answer for other organizations, thus rates of non-response may increase. For this type of item in the present questionnaire, roughly half of respondents consistently gave no answer or answered “Don’t know.”



## **Conclusions**

Respondents were given space to include additional comments related to the issues in the questionnaire. Over 20% of respondents included comments about problems with court interpreters. More specifically, 12% wrote that more qualified court interpreters are needed, 5% said that the lack of interpreters leads to injustice, one respondent remarked that the client must provide his or her own interpreter in civil court, and one respondent felt that the quality of court interpretation is poor. Other issues addressed in additional comments included positive efforts for diversity within Indiana Legal Services (2 respondents), problems with racism and sexism in Indiana courts (3 respondents), and problems with sexism within Indiana legal services (1 respondent).

Overall, this survey revealed that few employees of the organization perceive problems with race and gender equity in Indiana Legal Services. Most respondents felt that their organizations are fair in employment policies as well as representation of female and minority clients. However, the low representation of minorities as attorneys within the organization shows an area that still has room for improvement.

More problems were perceived with regard to the Indiana court system. Many respondents' organizations had had problems with unavailability of needed interpreters, and the additional comments noted above revealed some dissatisfaction with the quality and availability of court interpretation. Respondents' individual comments about case outcomes and sentencing of minorities and disrespect for female attorneys in court suggest that direct experiences of race or gender based discrimination still occur in Indiana courts. Unfortunately, the low rate of return for this survey makes a thorough analysis of these issues from the point of view of legal service providers somewhat tenuous.

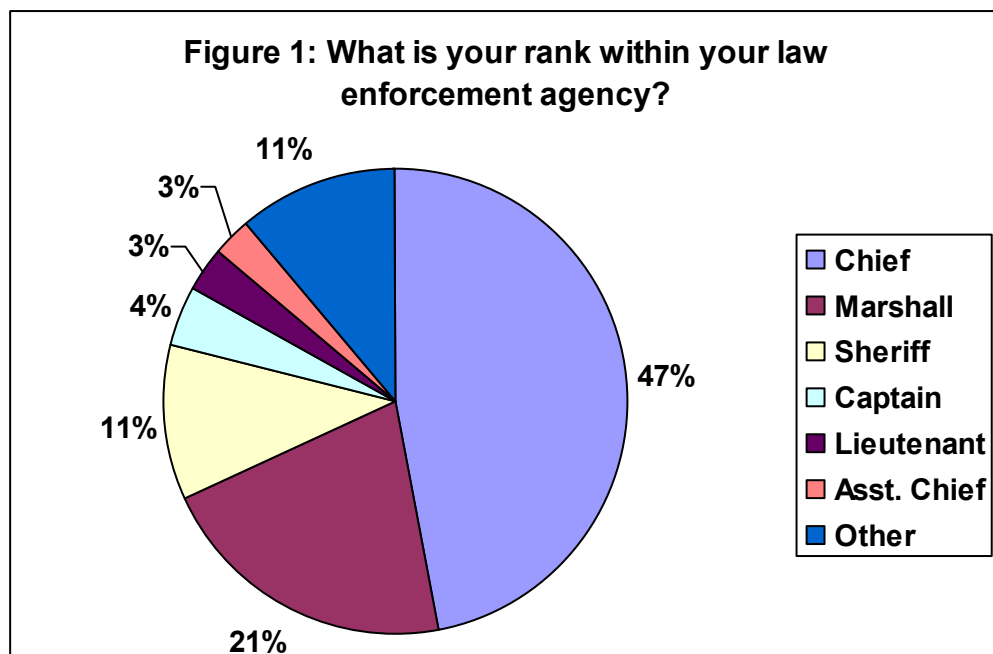
## E. Survey of Law Enforcement Officers

### Demographics

The Indiana Supreme Court Commission on Race and Gender Fairness provided the Public Opinion Laboratory with a list of Indiana law enforcement agencies. Questionnaires were sent 645 Indiana law enforcement agencies on July 17, 2002. Completed questionnaires were received from 234 Indiana law enforcement officers by the deadline of August 12, 2002. Understanding the background and demographics of these respondents may lead to a greater understanding of the results of the survey.

The vast majority of respondents (96%) were male. Twenty percent of respondents were age forty or under; 38% were forty-one to fifty, and 42% were over fifty. Nearly all respondents reported that their race or ethnic identity is Caucasian (96%), though two respondents were African American, two were Latino, and three were Native American. Two respondents chose not to reveal their race or ethnic identity.

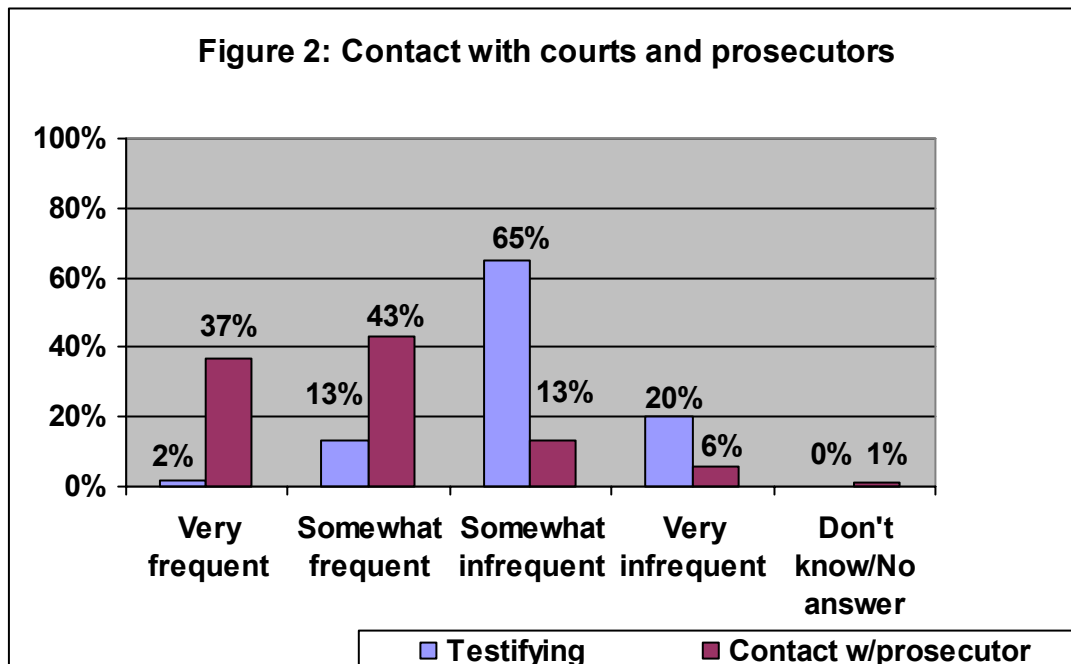
The majority of respondents are employed by city or town police forces (74%). Another 16% are employed by a county sheriff's department, 7% are employed by a special police force such as campus police or capitol police, and seven respondents reported some other type of police force. A large percentage of respondents hold a high-ranking position in their department, such as chief of police (47%), town marshal (21%), sheriff (11%), or captain (4%). Accordingly, many respondents indicated that their main job responsibility is administration (61%). This was followed by field enforcement (21%) and "all types of duty" (9%). Town marshals in particular often made marginal comments that their job encompassed all duties, even when they listed administration as their primary responsibility.



A majority of respondents had a long history in law enforcement, with 55% reporting that they have served as law enforcement officers for more than twenty years.

This finding is predictable given the high ranks of most respondents. Another 31% have served for eleven to twenty years, and 14% have served or ten years or less. As would be expected, respondents generally had shorter tenures in their current positions. A plurality (44%) had served in their current position for less than five years; 31% had served for five to ten years; 18% had served for eleven to twenty years, and 7% had served in their current position for more than twenty years.

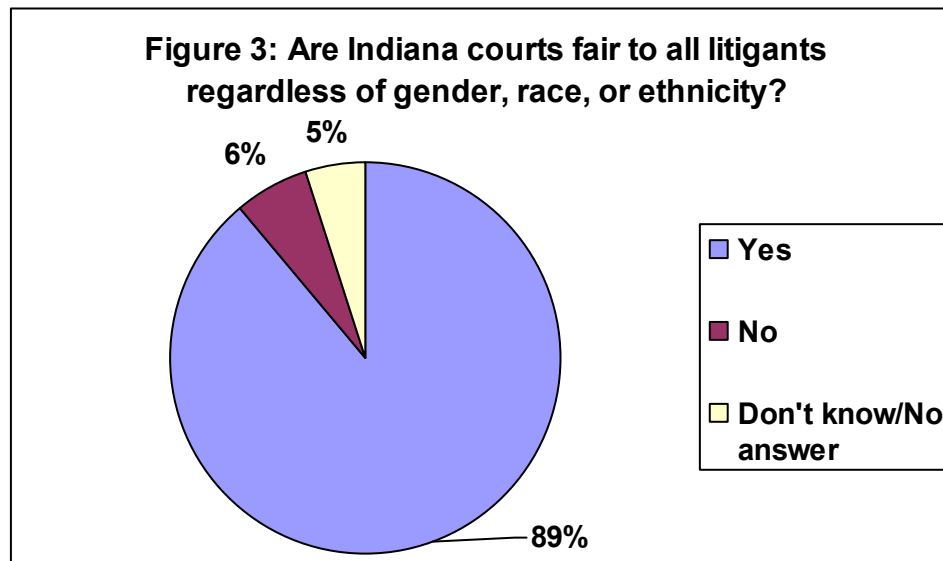
Respondents' level of contact with Indiana courts is also important to understanding their opinions about the courts. Eighty percent of respondents report that they are frequently in contact with prosecuting attorneys. Eighty percent also report that they are called to testify in Indiana courts at least once per year, though only 15% said they testify once a month or more.



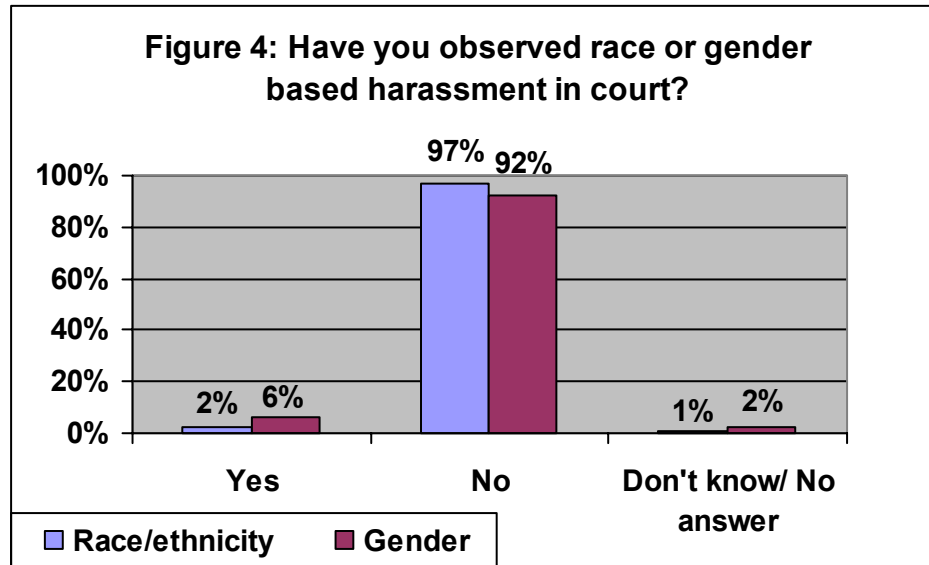
## **Main Findings**

### **I. General race and gender fairness; harassment**

When asked for a general view of the fairness of Indiana courts with regard to race and gender equity, 89% of respondents believed that the courts are fair to all litigants. While 18% of respondents reported that they had known of an Indiana court proceeding of which the outcome was unjust, only 4% of respondents reported that they had known of an injustice that was due to race or gender bias. Furthermore, 93% of respondents felt they had been treated with the same respect as law enforcement officers of another gender, and 92% felt they had been treated with the same respect as officers of another race or ethnicity.



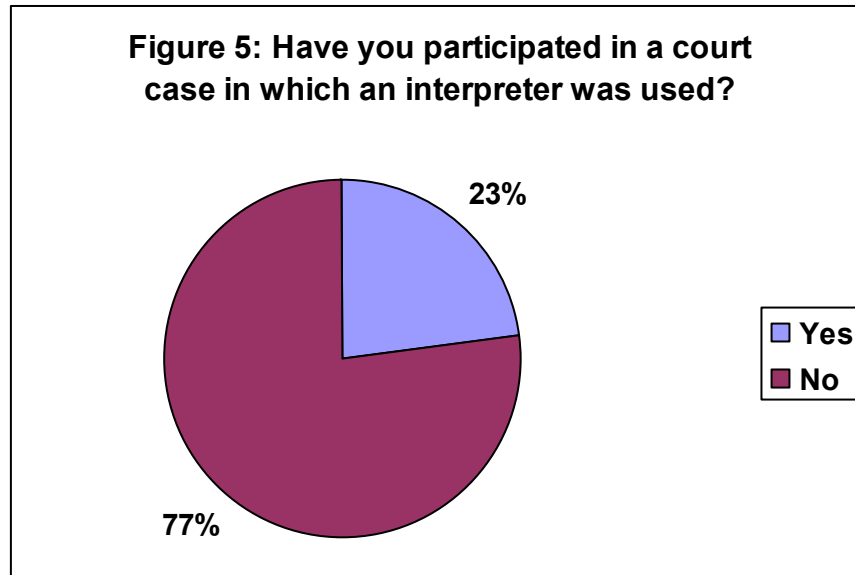
Very few respondents reported witnessing court personnel demeaning or disparaging people in court based on gender or race. First, 13 respondents (5.6%) said they had observed gender-based harassment in court. The majority of these (10 respondents) said that judges engaged in this harassment; four respondents implicated court employees, and one respondent said court security officers had engaged in gender-based harassment. The most common targets of gender-based harassment were judges (5 respondents) and litigants (5 respondents). Seven respondents said that the gender-based disparagement was directed at non-minority females; seven respondents also noted the behavior directed at minority females. Four respondents observed gender-based harassment of non-minority males, and three observed harassment of minority males. Seven respondents who observed the disparagement said it occurred “somewhat frequently;” six respondents said it occurred very or somewhat infrequently.



Even fewer respondents noted any demeaning or disparaging treatment in court on the basis of race or ethnicity. Just five respondents reported observing this type of harassment. Judges, court employees, and attorneys were each reported by three respondents to have engaged in harassment based on race or ethnicity. This behavior was reported by three respondents to have been aimed at attorneys, judges, and witnesses; harassment of litigants and jurors were each reported by two respondents, and harassment of court employees was reported by one respondent. Four respondents said the behavior was directed toward minority females, three toward minority males, two toward non-minority females, and zero toward non-minority males. Three respondents reported that they had observed race-based harassment in court somewhat frequently, one somewhat infrequently, and one very infrequently.

## II. Court interpretation

The next major topic addressed by the questionnaire was the use of court interpreters. Twenty-three percent of respondents indicated that they had participated in an Indiana court case in which an interpreter was used to aid a litigant who did not speak English.

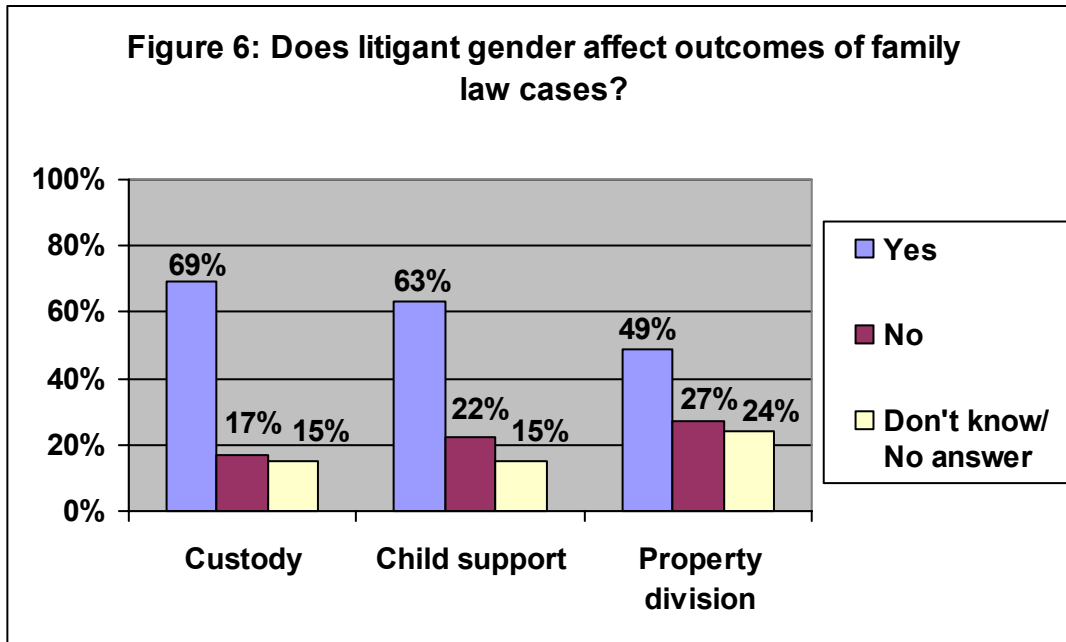


The median number of times that these respondents had participated in interpreted cases was two, with a mean of five. Spanish was the most common interpreted language, mentioned by 96% of those who had taken part in an interpreted case. Several other languages were also mentioned by one to three respondents; these languages included Chinese, American Sign Language, Serbian, and Polish. Of those who had participated in interpreted cases, 91% believed that court interpreters are or have been fluent in both English and the interpreted language. Ninety-one percent also reported that they believe the use of interpreters for non-English speaking litigants is administered in a fair and equitable manner.

### **III. Impact of gender on case outcomes**

The law enforcement officers surveyed commonly believed that the gender of the litigants has an impact on the outcome of family law proceedings. Specifically, nearly seventy percent of respondents believed that the litigants' gender affects the outcome of custody cases (68%). Sixty-two percent believed gender affects the outcome of child support and/or visitation cases, and 49% believed gender affects decrees dividing marital property. Furthermore, many respondents made additional comments on this topic, saying that gender plays too large a role in custody and family law issues (19 respondents), that mothers get custody even when they are poor parents (2 respondents), and that courts should hold mothers who deny visitation in contempt (1 respondent).





## **Conclusions**

Overall, of the various types of court participants surveyed in this project, law enforcement officers seemed to be least conscious of race and gender inequity in Indiana courts. The lack of awareness of race and gender inequities was shown in several ways. First, of all the types of court participants surveyed, law enforcement officers were least likely to report having observed race and gender-based harassment in court. Only 2% of law enforcement officers reported observing disparaging treatment based on race or ethnicity, compared to 9% of prosecutors, 12% of court employees, and 10% of attorneys. With regard to gender-based disparagement in court, 3% of law enforcement officers had observed such harassment, compared with 13% of prosecutors, 15% of attorneys, and 20% of court employees. Law enforcement officers were also among the least likely to believe that they had been treated unequally on the basis of race (2% compared with 5% of prosecutors), or gender (3% compared with 9% of prosecutors, 10% of court employees, and 14% of attorneys). The comparison with prosecutors is especially significant, because law enforcement officers and prosecutors may be similarly identified with the justice system. The disparity in perception of race and gender equity may be due to lack of contact with the courts and their problems, or it may indicate that law enforcement officers do not believe that such problems exist. Since only 15% of respondents testify in court more than once a year, the first explanation may be the most reasonable. If respondents only observe courts once per year, they would be far less likely to observe discrimination than attorneys or employees who are in contact with Indiana courts daily.

An interesting break in this pattern appears in the section on gender and family law. Despite their opinions on gender discrimination in other areas, law enforcement officers were quite likely to believe that gender affects custody, child support, and marital property division. Explanations in this survey as well as others in the project suggest that the gender bias perceived in these areas is bias against men rather than against women.

Considering that the vast majority of respondents were male, they may be more sensitive to discrimination against members of their own gender than to discrimination against women. However, it may also be that respondents who have little contact with the courts are more likely to have personal experience with this aspect of the law than with other areas.

## **F. Survey of Public Defenders**

### **Demographics**

The Indiana Supreme Court Commission on Race and Gender Fairness provided the Public Opinion Laboratory with a directory of Indiana public defenders. This list included both full-time public defenders and part-time public defenders who are also in private practice. The Public Opinion Laboratory received completed questionnaires from 165 respondents by the deadline of August 11, 2002. Seventy-seven percent of the respondents were male; 22% were female, and one did not divulge his or her gender. Most respondents identified themselves as Caucasian (96%), though others identified as African American (2 respondents), Asian American (1 respondent), or Latino (1 respondent). The mean and median age of respondents was 45 years.

The public defenders who responded to this survey had received their law degrees between two and fifty-two years ago, with a median of eighteen years ago. The majority had served in their current positions for ten years or less, with a median of nine years. Seventy-seven percent of respondents categorized their current position in the legal system as “private practice,” though all respondents served as public defenders at least part time. Twenty-two percent considered “public defender or public defender’s staff” to be their primary position. Respondents had a variety of experience in the courts prior to their current positions. The most common prior experience was private practice, mentioned by 33% of respondents. This was followed by prosecution (27%), public defender (21%), and criminal defense (13%). Nineteen percent of respondents gave no answer or had no experience in the courts prior to their current positions.

In their current positions, most respondents have very frequent contact with Indiana courts. Nearly 78% of respondents reported that they have appeared in a courtroom or in chambers more than ten times in the past month. Twelve percent appeared four to ten times in the past month, and just 9% appeared three times or fewer.

### **Main Findings**

As with the other surveys in this project, the questionnaire for public defenders addressed several main themes related to race and gender equity in Indiana courts. These topics included use of interpreters, jury selection, harassment in court, and case outcomes. The following sections will discuss the main findings of the survey in these topic areas.

#### **I. Court interpretation**

The majority of respondents (76%) reported that they had presented cases before judges who used an interpreter for non-English speaking persons during the past five years. These respondents reported that during the past six months they had taken part in an average of four such cases; the median number of cases during the past six months was two. The most common interpreted language was Spanish, reported by 90% of those who had taken part in an interpreted case during the past five years. Other top languages included American Sign Language (10%) and Vietnamese (7%).

A significant minority of respondents (28%) indicated that they had taken part in a case where a judge was unable to obtain an interpreter when one was needed. Most of the respondents who had experienced this problem (67%) said that it had occurred only one to three times during the past five years. Respondents who had experienced a problem with obtaining an interpreter were asked to describe the circumstances that led to the problem. The most common response, mentioned by 54% of these respondents, was the general comment that an interpreter was unavailable. Other respondents pointed out specific reasons for unavailability, such as lack of notice (24%), overburdened interpreters (11%), and lack of funds (9%).

We also asked this group of respondents to indicate how the problem with obtaining an interpreter had been resolved in cases they had taken part in. Most commonly, respondents said that the proceeding had been postponed until an interpreter was available (76%). Other common methods of handling the problem are listed in order of frequency in Table 1, below.

**Table 1: When a case requires an interpreter and none is available, which courses of action have been taken?**

<b>Course of action</b>	<b>Percentage</b>
Postpone proceeding until interpreter available	76%
Allow family member to interpret	43%
Allow friend of defendant to interpret	37%
Allow bilingual counsel to interpret	17%
Ask other court personnel to interpret	13%
Allow another defendant to interpret	11%

Approximately 9% of respondents reported that they are currently fluent in a foreign language, giving them a personal resource to handle the problem of unavailable interpreters. A majority of respondents believe that the court interpreters they have worked with have been fluent in both English and the interpreted language (70%); just 7% believe that interpreters have not been fluent, and approximately 23% did not know or gave no answer.

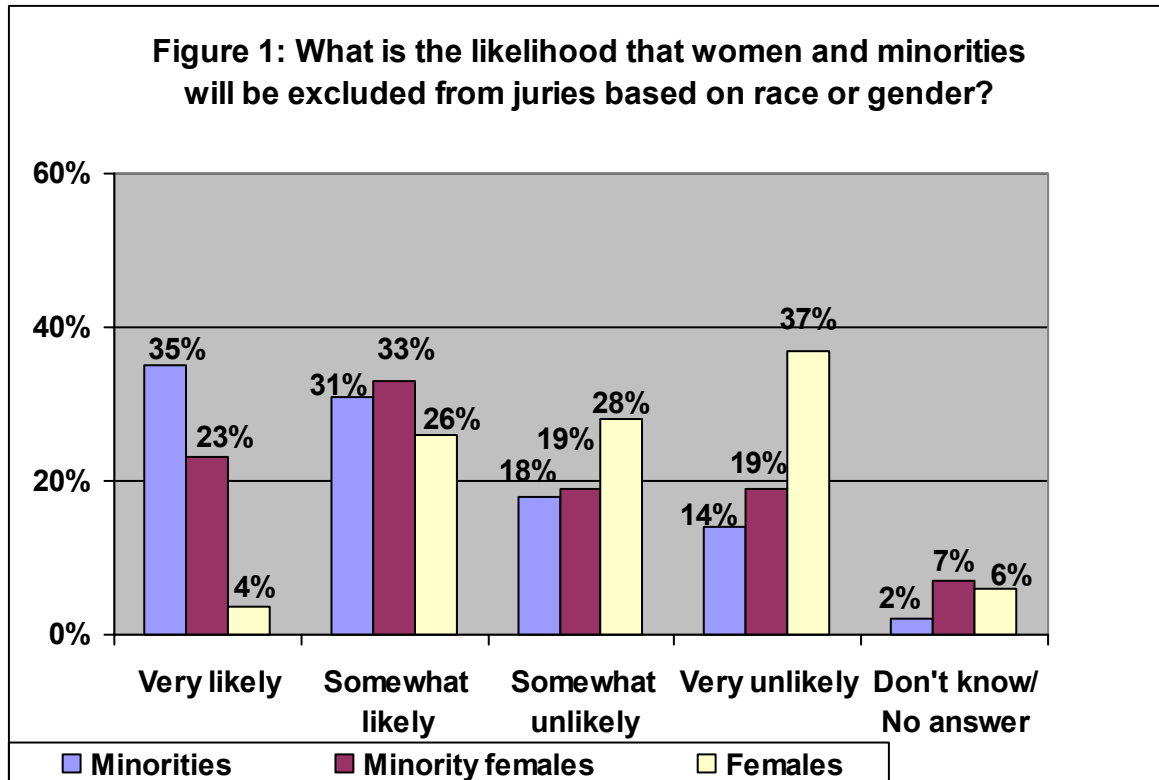
## **II. Jury selection**

Thirty-seven percent of public defenders surveyed said that they were aware of or had observed situations in which gender or ethnicity has resulted in the unfounded exclusion of people from juries. The respondents who were aware of such situations were asked to explain their observations. The table on the next page shows the most common explanations. It should be noted that explanations vary in their level of specificity, so that some categories could be grouped together as elaborations on other categories.

**Table 2: Explanations for exclusions from juries based on race or gender**

Explanation	Percentage of all respondents	Percentage of those aware of unfounded exclusions
Women or minorities removed without explanation	11%	30%
State removes black jurors when defendant is black	7%	20%
Peremptory challenges allow covert race-based strikes	6%	16%
Jurors of same race as defendant are removed	2%	7%

In addition to these comments regarding general gender and race based exclusions from juries, we also asked about the likelihood that members of various groups would be excluded based on race or gender. First, 66% of respondents believe that it is somewhat likely or very likely that racial or ethnic minorities will be peremptorily excused based on their race or ethnic identity. Fewer respondents (30%) believe that it is very likely or somewhat likely that women will be excluded based on their gender, and 56% believe that it is very or somewhat likely that minority females will be excluded disproportionately compared to other members of the jury pool. The chart below illustrates these findings.

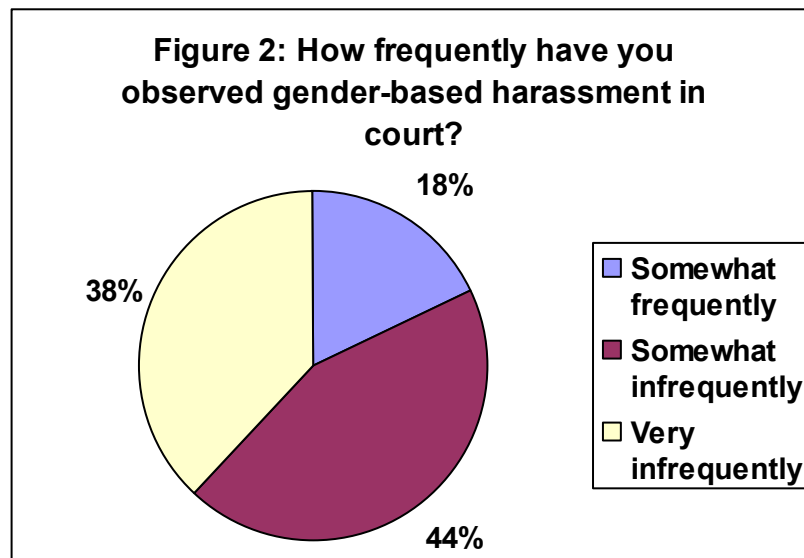


### III. Harassment in court

The questionnaire addressed several dimensions of race and gender based harassment in court, including the conduct of judges, the conduct of other court personnel, and any discrimination or harassment experienced by respondents personally. First, 32% of respondents answered “yes” to the question, “Have you observed any Indiana judges who speak or act in a demeaning or disparaging manner toward any person based on race, gender, or ethnicity?” The group who said yes were asked to explain the conduct they had observed. The most common observation, reported by 21% of these respondents, was that a judge addressed women disrespectfully. Other top answers included “Judge addressed minorities disrespectfully” (21%), “General racist/sexist comments, actions, jokes” (13%), and “[Judge made] comments about female attorney’s attire” (13%).

Next, we asked whether respondents had observed any court personnel demeaning or disparaging people in court based on gender. Twenty-one percent of respondents indicated that they had observed such gender-based harassment. Judges were the most frequently reported perpetrators of this harassment (79% of those who observed gender-based harassment). Forty-seven percent of these respondents said that court security officers had engaged in the behavior, and 44% said that court employees had done so. The harassment was most often reported to be directed at non-minority females (82%), followed by minority females (62%), minority males (44%), and non-minority males (21%). The types of court participants most often reported to be harassed based on gender were litigants (79%) and witnesses (53%). The majority of public defenders who

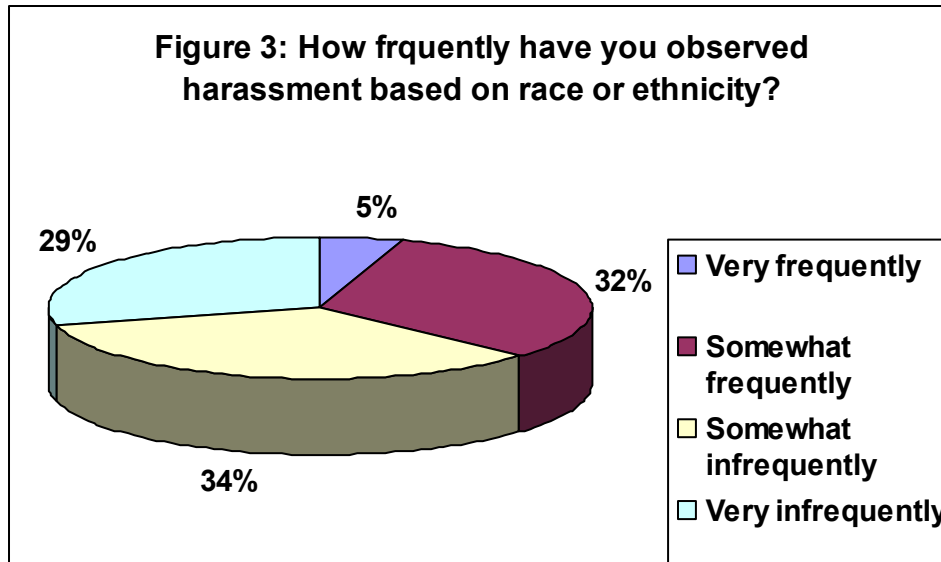
observed gender-based harassment in court reported that they had observed it either somewhat infrequently or very infrequently (82%).



Note: Percentages refer only to the group who had observed harassment.

With regard to race-based harassment, 23% of respondents had observed demeaning or disparaging treatment in court based on race or ethnicity. Court employees, implicated by 68% of these respondents, were the type of personnel most commonly reported to have engaged in racial harassment. Judges (63%) and court security officers (53%) followed closely. Minority males were the group most often reported to be harassed by court personnel (87%), followed by minority females (74%) and non-minority females (24%). Again, the types of court participants most often reported as being harassed based on race or ethnicity were litigants (87%) and witnesses (61%). Respondents reported observing harassment based on race or ethnicity somewhat more frequently than for harassment based on gender. However, the majority of respondents who reported observing race-based harassment said that they observed it somewhat infrequently or very infrequently (63%).

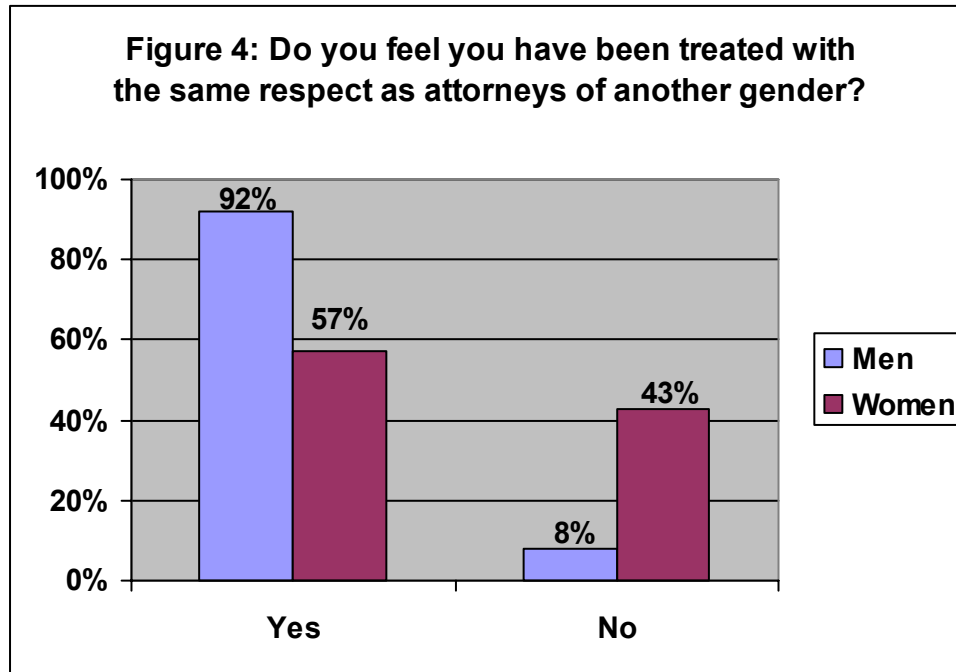




Note: Percentages refer only to those respondents who had observed race-based harassment.

To conclude the section on race and gender based discrimination or harassment in court, we asked respondents about the treatment they personally have received in Indiana courts. The majority of all respondents felt they had been treated with the same respect as attorneys of another gender. However, as in most other surveys in this project, men were much more likely to feel they had been treated with equal respect than were women. The association between gender and opinion on this issue was fairly strong, with a contingency coefficient of .37 and Kendall's Tau of .42 (see chart below for an illustration of the strength of this association)<sup>4</sup>. The probability that this association appeared as a product of sampling error was less than 0.1%.

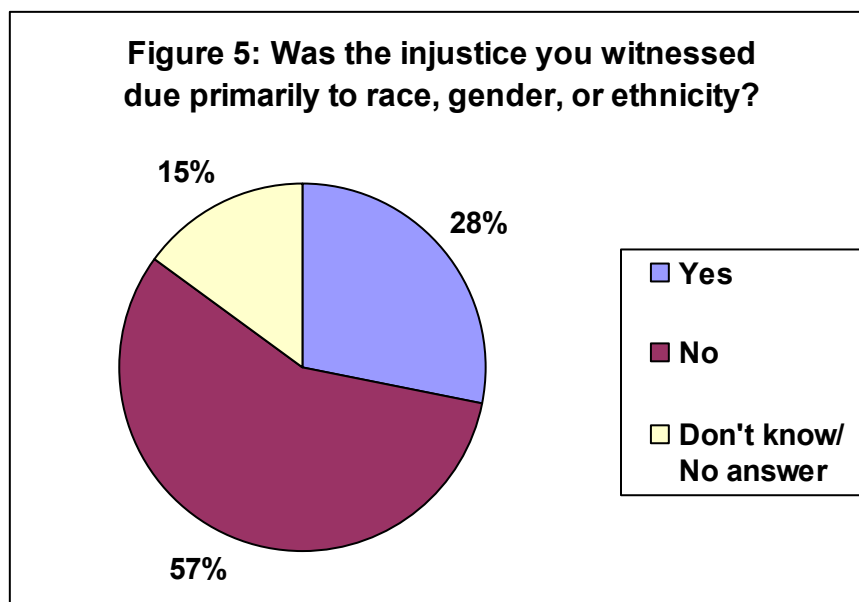
<sup>4</sup> To facilitate analysis, nine cases with a "don't know" or "no answer" response were excluded from these calculations.



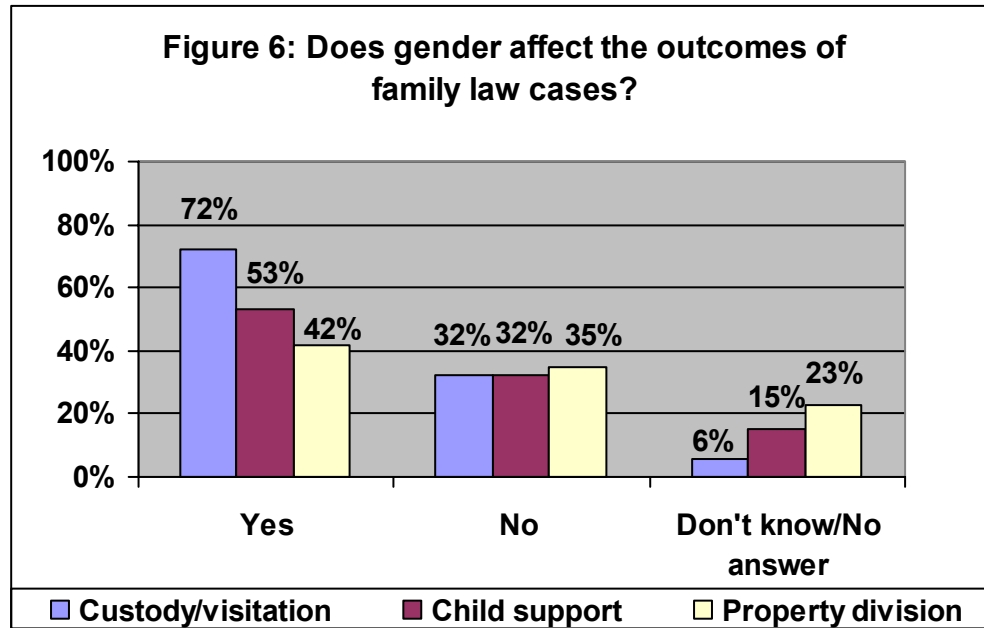
Respondents were also asked, “In your experience in Indiana courts, do you feel you have been treated with the same respect as attorneys of another race or ethnicity?” Nearly all respondents (98%) said yes; just three respondents said no. Interestingly, responses to this question did not fit the pattern of association between race or ethnicity and opinion on this issue established in the other surveys. There appeared to be no statistically significant association between these variables in this survey.

#### **IV. Effects of race and gender on case outcomes**

The final issue addressed by the survey of public defenders was the possible impact of race and gender bias on the outcomes of Indiana court cases. Ninety-one percent of respondents said they had observed or known of an Indiana court case of which the outcome was unjust. A significant minority of respondents (26%, or 28% of those who had observed an unjust outcome) reported that they had observed an unjust outcome which they believed was due primarily to race, gender or ethnicity. The chart on the next page illustrates this finding.



The questionnaire also asked respondents whether they believed gender plays a role in the outcomes of several types of family law cases. Overall, a majority of public defenders surveyed did believe gender affects the outcomes of some of these cases. Seventy-two percent believed that it is very likely or somewhat likely that the gender of the litigants plays a role in the outcome of custody and visitation issues. The respondents who believed that gender affects the outcomes of custody and visitation cases were asked to explain their opinion. The most common explanation, given by 71% of this group of respondents, was that “mothers [are] more likely to be granted custody.” This was followed by the explanation that the “tender years” doctrine, in which young children are considered to be better off with their mothers, persists (14%). Fifty-three percent believed child support awards and enforcement of those awards is generally affected by gender, and 42% believe that gender plays a role in the outcomes of decrees dividing marital property.



Note: For custody, answers of “very likely” and “somewhat likely” were counted as “yes.”

## **Conclusions**

In conclusion, a significant percentage of public defenders surveyed believed that there are problems with race and gender equity in several areas of Indiana court operations. In the area of court interpretation, nearly 30% of respondents reported that they had experienced a problem with obtaining a needed interpreter for a court proceeding. Over ten percent of respondents reported that a non-professional interpreter, such as a family member or friend of the defendant, had been allowed to interpret in court. Several respondents made margin notes explaining that regardless of one’s level of fluency, an interpreter who had not been trained in legal terminology would most likely not be adequate.

With regard to jury selection, many respondents believed that there is a significant likelihood that members of racial and ethnic minorities will be excluded from juries based on their race or ethnicity. Furthermore, significant minorities reported observing race-based (23%) and gender-based (21%) harassment in Indiana courts. Nearly 30% reported having observed a race or gender based injustice in the outcome of an Indiana court case. Possibly due to their position in the court system, the public defenders we surveyed seem to be more attuned to instances of race and gender inequity than other types of court participants included in this project.

### **III. Conclusions**

As comparison of the opinions of various groups of court participants has shown, there are significant disparities in the groups' perceptions of race and gender fairness in Indiana courts. Some problems, such as gender bias in family law and lack of qualified interpreters, were noted by many respondents in all groups. Other problems, such as unjust case outcomes and harassment, were reported by many in some groups in few in others. The differing positions and allegiances of different groups within the court system may be a possible explanation for these disparities.

The demographics of many of these surveys indicate that the respondents were overwhelmingly male and Caucasian. This points either to a lack of representation of women and minorities in the court system, or to a reticence on the part of women and minorities to express opinions about the level of fairness. Among the women and minority court participants who did respond, a pattern emerged across several of the surveys in which these groups seemed to be significantly more aware of race and gender based inequities in the court system.

These disparities in perception of race and gender fairness, both between types of court participants and between ethnic, racial, and gender groups, point to a need for ongoing sensitivity and education in addressing these important issues.

# C

## APPENDIX

# INDIANA SUPREME COURT

## Commission on Race and Gender Fairness

### *Focus Group Research Report*

presented by

**ZQI, Inc.**  
John Zurick

August 28, 2002



ZQI, Inc.



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## **Introduction**

At the direction of the Indiana Supreme Court Commission on Race and Gender Fairness, the Cincinnati, Ohio-based firm, ZQI, Inc., conducted 18 focus groups in the Indiana communities of:

1. Indianapolis/Marion County
2. Gary/Lake County
3. Evansville/Surrounding Counties

These focus groups were conducted between June 26 and August 8, 2002.

### **Purpose**

The purpose of this focus group research project was to support the efforts of the Indiana Supreme Court Commission on Race and Gender Fairness. To that end, these focus groups gathered qualitative, in-depth information on the topic of possible race and gender bias in the Indiana judicial system.

### **The Nature and Value of Focus Group Research**

Focus group research is an enlightening but inexact science. The findings of these focus group discussions cannot be projected over the entire Indiana population, nor can they be projected over the respective populations of the communities where the focus groups took place. The conclusion that *everybody* within the participating groups shares the expressed views, or that a *specific percentage* of those represented shares the same view, cannot be drawn to a measurable degree. **It is reasonable to conclude, however, that others within the represented constituencies share similar views.** In those cases where similar views have been expressed repeatedly and independently by members of different focus groups in different communities, *it is reasonable to conclude that those views are shared by many other people around the state.*

A primary value of these discussions lies in their ability to elicit candid, *in-depth opinions*. By eliciting these opinions in a personal, extemporaneous setting, they can be expressed and understood with greater detail than is possible through other forms of research. Because every focus group is guided by a moderator, probing to ascertain key comments' underlying meanings, it can be concluded that the interpretations of these discussions are an accurate reflection of the participants' views and experiences.

*The conclusions presented herein, therefore, represent the genuine perceptions, experiences and ideas of the people expressing them. In many cases they are representative of numerous other people around the State of Indiana.*

## **Methodology**

Initially, five focus groups were conducted in each of the three communities identified above. Representatives from five different court constituencies, in each community, attended the focus groups. Participants in each focus group were clustered in accordance with the court constituency to which they belong. (Members of different constituencies were not mixed in the same focus group.) The five constituencies, and five groupings, were:

1. Court Employees
2. Court Users
3. Criminal Lawyers
4. Non-Criminal Lawyers
5. Law Enforcement Officers

In each community, names of 50-100 individuals within each of these groups were selected at random from employee rosters, Bar Association listings and other court records. Letters signed by Supreme Court Chief Justice Randall T. Shepard were mailed to all individuals selected, inviting each person to attend a focus group discussion. (See Exhibit A.)

Individuals receiving letters were then telephoned by representatives of ZQI, to address further questions about the project and reiterate the invitation to participate. Focus groups were filled on a first-come/first-accepted basis.\*

All participants were promised confidentiality, in the Chief Justice's invitation letter, in the follow-up telephone invitation and in the opening remarks at each focus group discussion. Participants were told their names would not be a part of any report on these focus groups. They were encouraged to speak with full candor, on the condition that nothing said would be attributed to them personally, and nothing relating to their participation would be used against them.

Due to time constraints and other complications in the recruiting process, some focus groups were attended by less than the desired number of participants. Court Users were particularly difficult to reach, due to changes of address and disconnected phone service.

In Evansville, a scheduling conflict occurred with the 4-H County Fair. Most Evansville law enforcement officers worked special duty shifts at the fair, which opened the evening before the Evansville Law Enforcement Officers focus group. As a result, they were unable to attend their focus group.

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\* Recruitment for the second round of focus groups in Indianapolis consisted of telephone contact of individuals and organizations that had been referred for participation.

Because the first set of Indianapolis/Marion County focus groups did not yield significant ethnic or gender diversity in the lawyer groups, and did not yield a sufficient number of Court Users, an additional round of three focus groups was held in Indianapolis on August 8, 2002. Those groups were attended by:

1. Lawyers of Color
2. Female Lawyers
3. Defendants

Following are the findings of these 18 focus groups.

# **Key Findings**

## **I.**

### **General Views Shared: Across All Three Communities**

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The following viewpoints were expressed in multiple focus groups in all three communities in which the focus groups took place.

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in these focus groups; they are not intended as fact.)*

- 1. The judicial system is unfair to African Americans.**
  - a. This unfairness begins at the point of arrest, where *racial profiling* is routinely practiced by law enforcement personnel.
  - b. This unfairness is exacerbated in the court system.
  - c. The cultural differences between African Americans and their (often) Caucasian judges, juries and attorneys lead to the unfair presumption of guilt.
- 2. The judicial system is unfair to Hispanics.**
  - a. Hispanics also experience racial profiling by law enforcement personnel.
  - b. Language and cultural differences, and a scarcity of competent interpreters, put Hispanics at a disadvantage in the court system.
- 3. Sentencing is more severe for minorities.**
  - a. Caucasian defendants generally are sentenced with more leniency than minorities, particularly African Americans.
- 4. Judges do not understand the American sub-cultures represented by minority litigants.**
  - a. Judges are insensitive and prejudicial toward the nuances of speech, family, dress and general lifestyles among the minorities and poor people they regularly see in their courts.
- 5. Gender bias in the judicial system presents itself in many ways.**
  - a. Men are presumed guilty in domestic disputes, beginning at the time of complaint.
  - b. The system includes a network of support services for females involved in domestic problems, but no such network exists for men.
  - c. Men are considered to be less desirable custodial caregivers in cases of child custody.
  - d. Women receive lighter sentences than do men.

6. **The race and gender of practitioners in the legal system are disproportionate with the cultures the legal system serves.**
  - a. There are not enough minority and female judges, lawyers, law enforcement officers and probation officers.
7. **The perception of race and gender bias, and general socioeconomic bias, is deeply felt and unanimous among court users.**
  - a. Every group agreed on this perception.
8. **Race, gender and general socioeconomic biases in the courts manifest themselves in subtle ways.**
  - a. Very few overtly discriminatory incidents can be recalled.
9. **Cronyism is an important factor in courtroom strategies.**
  - a. All three of the regional court systems visited are characterized by networks of insiders, consisting primarily of Caucasian male judges and lawyers.
  - b. *Ex parte* communication is widespread.
  - c. Attorneys and their clients who are outside this network feel disadvantaged and develop their strategies accordingly.
10. **“Judge shopping” is practiced by attorneys in all three communities.**
  - a. Most judges exhibit predictable biases, which vary with the type of case they are hearing and the type of defendant in the case.
  - b. Lawyers maneuver their continuances and scheduling to align their cases with the judges who are most favorable toward its particular conditions.
11. **Socioeconomics is the greatest factor influencing court system outcomes.**
  - a. Litigants who can afford the best lawyers—regardless of the respective litigant’s race, gender or pending charge—achieve the most favorable court decisions.
  - b. Poor litigants are very likely to receive unfavorable outcomes.
  - c. Poor and uneducated litigants receive the least favorable outcomes.
12. **Law enforcement officers are very frustrated with the system in which they work.\***
  - a. The work they do and the risks they take are unappreciated by judges, lawyers and the citizenry.
  - b. Their pay is low.
  - c. Their time in the courts is often wasted.
  - d. Their testimony is often not treated as credible.
13. **The excessive continuances the courts grant are counterproductive to the overall work of the judicial system.**
  - a. Excessive delays waste everyone’s time.
  - b. Continuances often result in crimes going unpunished.
  - c. Attorneys use continuances to run up their billings and juggle more cases than they would otherwise be able to handle.

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\* As noted later in this report, Law Enforcement Personnel focus groups were conducted in Indianapolis/Marion County and Gary/Lake County. Due to recruiting difficulties, the Evansville Law Enforcement Personnel focus group was attended by only one officer.

**14. The excessive number of plea agreements granted by the courts also is counterproductive to the overall work of the justice system.**

- a. They often result in defendants agreeing to conditions they don't understand.
- b. Prosecutors push for them because without plea agreements they would not be able to manage their caseloads.
- c. Public defenders push for plea agreements because they can't afford to invest the needed time in cases that pay sub-standard fees.
- d. Judges often accept plea agreements without understanding the circumstances of the case, effectively eliminating the role of the judge in the criminal process.

**15. The “war on drugs” is not working.**

- a. Drug sentencing guidelines are too severe.
- b. More treatment programs are needed.
- c. The failure of the war on drugs impacts African Americans most severely.

**16. The probation system is too punitive.**

- a. It sets people up to fail by requiring forms of compliance that are in conflict with maintaining a job, attending counseling, rebuilding a family.
- b. Probation officers have too much control over probationers' freedom.
- c. The courts usually rule in favor of the probation officer.



## **II.**

### **General Views Specific to: Indianapolis/Marion County**

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**The following viewpoints emerged from the Indianapolis/Marion County focus groups. These viewpoints are specific to Indianapolis/Marion County.**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in these focus groups; they are not intended as fact.)*

1. There is strong resentment among court employees toward the “court services” administrative department of the courthouse.
  - a. This relatively new management department is mistrusted by rank and file court employees.
  - b. Court employees are expected to maintain the party line...that the system is fair.
  - c. Speaking out against the system is discouraged.
2. Judges in Marion County have been overheard using racial slurs.
  - a. This has occurred on multiple occasions, overheard by different people.
3. Police in Marion County often use excessive force.
  - a. Several focus group participants related being beaten by police.
4. If you can afford one of the best criminal lawyers in Marion County, you can get away with almost anything.
  - a. One’s ability to pay a good lawyer is the most important factor in the outcome of a defendant’s experience in the justice system.
5. Indianapolis/Marion County halfway houses do a very good job of rehabilitating their clients.
6. Large law firms in Indianapolis have a “glass ceiling,” which is very difficult for female and minority lawyers to break through.

### **III.**

#### **General Views Specific to: Gary/Lake County**

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The following viewpoints emerged from the Gary/Lake County focus groups. These viewpoints are specific to Gary/Lake County.

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in these focus groups; they are not intended as fact.)*

1. Cronyism in the court system goes back several generations and is an accepted condition of the judicial system.
2. The Democratic Party has exercised predominant control over the court system for decades.
3. A “girls’ club” is emerging, consisting of female judges, magistrates and lawyers, primarily in divorce court.
  - a. This is making it harder for male attorneys and litigants to be treated fairly.
4. Many law enforcement officers believe that if more parents used corporal punishment in rearing their children there would be less crime.

### **IV.**

#### **General Views Specific to: Evansville/ Surrounding Counties**

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The following viewpoints emerged from the Evansville focus groups. These viewpoints are specific to Evansville and surrounding counties.

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in these focus groups; they are not intended as fact.)*

1. The dramatic disparity between the small percentage of the population that consists of people of color and the large percentage of arrests made of people of color is not an indicator of racial bias.
2. Although unfairness toward people of color, females and poor citizens exists in the Evansville legal system, the system is generally fair. (There is widespread acceptance of this incoherency.)
3. The perception of unfairness in the legal system, among defendants, is not the problem of the legal system.
  - a. Because it is only a perception and not the reality, the legal system does not need to be concerned about it.

## **Recommended Next Steps**

- 1. Present the findings of this focus group research project to judges around Indiana.**
- 2. Give judges an opportunity to respond.**
  - a. Through focus groups, forums and individual interviews.
- 3. Conduct a statistical analysis of:**
  - a. The number of African American and Hispanic arrests in designated communities compared with the percentage of the total population made up of African Americans and Hispanics.
  - b. Sentencing in designated communities, broken down by offense, offender status (first offender/repeat offender), race, gender.
  - c. The average number of continuances granted in selected types of cases, the average length of time they add to the proceedings, and how final outcomes compare to proceedings with no continuances granted.
  - d. The number and nature of plea agreements and their relationship to original charges, sentencing, race of defendants, and the caseloads of the courts in which they are reached.
- 4. Create maps of Indiana urban areas with 1,000-foot-radius circles drawn around all schools and playgrounds.**
  - a. Analyze these maps to determine the minority populations living inside the circles.
  - b. Determine the percentage of the total minority populations living within these circles.
- 5. Further probe the treatment of Hispanics and their perceptions of the criminal justice system in Indiana.**
  - a. Conduct focus groups of court interpreters in Indianapolis/Marion County and Gary/Lake County.
  - b. Conduct focus groups of incarcerated Hispanic defendants.
- 6. Further probe the frustration expressed by law enforcement personnel.**
  - a. Conduct additional law enforcement focus groups to better understand the root cause of the frustration.
  - b. Develop recommendations for remediation.
- 7. Develop a program and certified curriculum for the ongoing sensitivity training of judges, attorneys, court employees and law enforcement personnel.**
  - a. Make regular participation in such training a required component in the continuing education and job retention in these professions.

**8. Educate court users on the workings of the judiciary.**

- a. Offer all defendants free literature and seminars to help them understand their rights and the basic functions of the Indiana criminal justice system.
- b. Work with K-12 education leaders to develop required coursework focused on the current-day judiciary and how to interact with it.

# **Summarized Reports**

**By Individual Focus Group**

## **I.**

### ***Emergent Themes and Perspectives***

#### **Court Employees—Indianapolis/Marion County**

**June 27, 2002**

**This focus group was attended by seven employees of various Marion County courts (one African American female, one Caucasian female, four African American males and one Caucasian male).**

***(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.***

1. African Americans receive unfair treatment in the Marion County court system.
2. Hispanics, Asians and other minorities also receive unfair treatment.
3. The court's discrimination against these groups is subtle, and very difficult to cite in overt examples.
4. Generally, jail time, probation, fees and fines are more severe for ethnic minorities.
  - a. The severity of these discrepancies is within discretionary ranges
  - b. These discrepancies vary with the respective judge and individual cases.
5. The system sets people up to fail.
  - a. The people least able to meet probation and related fees and fines are the people dealt the most severe sentences.
  - b. When people can't meet the requirements of the sentences, their punishment becomes even more severe.
4. The probation system has become too punitive.
  - a. Instead of helping probationers re-enter law-abiding society, many probation officers look for ways to "violate" their probationers.
  - b. Too many probation officers are "cut throats."
  - c. There's a vicious cycle:
    - i. Because so many people are sentenced to long probations, the number of probation officers is growing rapidly.
    - ii. Because there are now so many probation officers, prosecutors are agreeing to more probationary sentences to feed the bloated probation officer ranks.
    - iii. "The prosecutor's office runs the probation department."

5. There are too many plea agreements.
  - a. In an indirect way, plea agreements take the judgment away from judges and give prosecutors and defense attorneys too much power.
  - b. Judges accept most plea agreements presented to them.
  - c. "Probation is being offered on a wholesale basis."
  - d. Defendants and victims often agree to plea agreements without understanding to what they are agreeing.
6. Politics play too big a role in court proceedings.
  - a. The appearance that certain judges and certain lawyers are friends leaves those outside this friendship feeling at a disadvantage
  - b. One incident of *ex parte* was cited and the group agreed that they believe *ex parte* is common.
  - c. Elected judges owe too many favors.
  - d. Many elected judges are younger and seem lacking in the general wisdom of former appointed judges.
  - e. Some judges seem to be looking over their shoulders because they're afraid they might not get re-elected.
  - f. Elected judges should be "evened out"...there should be an equal number of Republicans and Democrats allowed.
7. Judges are out-of-touch with the segments of society they judge in their courtrooms.
  - a. They don't understand what it's like on the streets, "They're above us."
  - b. African American judges have a better understanding of what life is really like.
8. There are not enough African American prosecutors.
9. The "court services" department (the relatively new administrative department that administers the personnel matters of Marion County courts) has severely damaged the morale of Marion County court employees.
  - a. The department has created an "us vs. them" workplace culture.
  - b. They stay on the 12<sup>th</sup> floor "...with their one African American employee and their big titles" and make decisions about people's jobs.
  - c. It's much easier for court employees to get fired now...it's the worst it's been in 17 years.
  - d. "They think they're running the show, but they're not."
  - e. Court employees used to be dedicated to their jobs. Court Services has ruined that culture.
10. Women, in general, are treated with less respect by male civil attorneys.
  - a. Male attorneys expect female court employees to perform menial duties for them such as making copies, retrieving files.
11. Female bailiffs are paid less than male bailiffs.
12. Some judges expect female employees to do the office work and stay out of the courtrooms.
13. Hispanics receive more severe plea agreements and sentences.
  - a. The lack of competent interpreters is a serious problem.
14. It's becoming a "new day" for ethnic minorities.

- a. It used to be the case that African Americans worked exclusively for African American judges and Caucasians worked exclusively for Caucasian judges, but that situation is improving.
- 15. People who work for the court system are expected to maintain the “party line” that the system is fair.
  - a. That expectation itself is unfair.
- 16. People need to be educated about the legal system.
  - a. The long term solution to unfairness is education.
  - b. Judges need diversity training, so they can understand why people sometimes have to steal food to feed their children.

## II.

### ***Emergent Themes and Perspectives*** **Court Employees—Gary/Lake County**

**July 16, 2002**

**This focus group was attended by twelve employees of various Gary/Lake County courts (two African American males, two African American females, one Hispanic female, two Caucasian males, five Caucasian females).**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

- 1. African American youths often carry their juvenile arrest records through their adult lives because they don’t know they can apply to have their records expunged after they become adults.
  - a. In most cases, expunging a record is a simple procedure.
  - b. Many people are of the mistaken belief that juvenile records are automatically wiped clean when the individual reaches adulthood.
  - c. This is an example of how the lack of education on the system results in a disadvantage.
- 2. Many African Americans try to avoid jury trials because they believe juries in Lake County will be biased against African Americans.
  - a. African American defendants often believe they have a better chance of fairness if the judge makes the ruling of guilt or innocence.
- 3. Judges should not be appointed.
  - a. This deprives citizens of a fair say in the process.
  - b. Minorities are left out when judges are appointed.
- 4. You can “buy justice” in Lake County.
  - a. If you can afford the right lawyer, you can get away with just about anything.
  - b. The people with the most money to spend usually come out ahead in divorce and child custody cases.

- c. Expensive lawyers delay proceedings until the other party runs out of money.
  - d. Too many divorces take a year or more to settle.
- 5. Probation officers are underpaid.
  - a. Even those with four year degrees start at salaries at the bottom of the pay scale.
- 6. (One Caucasian probation officer who participated in the discussion, who is married to an African American man, recalled several incidents of workplace harassment relating to her mixed-race marriage.)
- 7. Kids are sometimes punished unfairly in court for the way they dress.
  - a. They don't know how to dress appropriately.
  - b. No one at home provides good advice.
  - c. When kids get to court they look guilty, and that influences the way they are treated.
- 8. Judges need to be more familiar with the generations and cultures they see in court.
  - a. Because judges are out of touch, they are insensitive.
- 9. Most judges are more lenient toward women, in general.
  - a. Women receive lighter sentences.
  - b. They are automatically regarded as the victim in domestic disputes.
  - c. They are favored in child custody cases.
- 10. Language barriers result in unfair treatment of Hispanics.
  - a. Interpreters are improving, but there still are not enough and some are not completely bilingual.
- 11. Plea agreements are severely unfair in many ways.
  - a. Sometimes plea agreements are struck, which the defendant does not understand.
  - b. They are the easy way out for prosecutors and public defenders.
  - c. They deprive both defendants and victims of a fair trial.
  - d. Expensive lawyers use their relationships and expertise to achieve lenient plea bargains for serious offenders.
  - e. Because judges accept most plea agreements, plea agreements place the dispensing of justice in the hands of lawyers.
- 12. (This group was reticent to discuss issues candidly. The views and experiences they offered seemed to be expressed in an atmosphere of suspicion of each other.)



### **III.**

#### ***Emergent Themes and Perspectives***

#### **Court Employees—Evansville/Surrounding Counties**

**July 23, 2002**

**This focus group was attended by eleven employees of various Evansville-area courts (eight Caucasian females, one African American female, one African American male, one Caucasian male).**

***(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)***

1. Laws regarding sexual misconduct are unfair.
  - a. In one case, a 29-year-old man impregnated with a 15-year old girl.
    - i. Both families approved of the relationship.
    - ii. He was charged and convicted of statutory rape, and now needs to register as a sexual offender.
    - iii. He and the victim are now married with three children.
    - iv. The laws will soon change, requiring him to remain at least 1,000 feet from the victim—his wife.
    - v. This is unfair.
2. Laws regarding drunk driving are unfair.
  - a. A drunk driver caused an accident that resulted in the victim being paralyzed for life.
  - b. The drunk driver was sentenced to only three years in a halfway house.
3. Sentencing is generally more severe for African Americans.
  - a. A Caucasian county sheriff was convicted of stealing over \$50,000 from the department.
    - i. He was sentenced to community service...no jail time.
  - b. An African American man stole \$20,000 from the parks department and was sent to jail for eight years.
  - c. These were essentially the same crime, except the sheriff's offense was more damaging to the community.
4. The officials in the justice system in the Evansville area are virtually all Caucasian.
  - a. All judges are Caucasian.
  - b. There are two African American county sheriffs.
  - c. There are "a few" African American Evansville Police officers.
  - d. There are no Hispanic judges or law enforcement officers.
  - e. There are only a few minority lawyers..."probably less than five."
5. Probation officers cannot trust their probationers.
  - a. Even when a probationer seems trustworthy, the probation officer has to assume the probationer can't be trusted.

- i. Probation officers don't want the liability of backing a probationer who may commit other crimes.
- 6. Judges in the Evansville area all have distinctive styles.
  - a. Certain attorneys can always get good deals from judges with whom they are friendly.
  - b. Most attorneys know how to pick the judge most favorable to a certain kind of case.
    - i. This is referred to as "judge shopping."
- 7. Courtrooms around Evansville are poorly organized.
  - a. Many people miss their appearances because they can't find the courtroom, or wait in the wrong courtroom.
  - b. The courtrooms themselves are often chaotic.
    - i. Cell phones and pagers are not turned off.
- 8. Socioeconomics factors are more of an influence in court proceedings than race.
  - a. People who can afford the right attorney stand a much better chance.
- 9. The best attorneys are the ones who are most familiar with the judges.
  - a. There is an inner circle of attorneys and judges.
    - i. Defendants who can buy their way into this inner circle, by hiring the right attorney, get the best outcomes.
  - b. Public defenders are outside this circle.
    - i. Their clients are at a disadvantage.
- 10. Cases are often continued as a tactic in the "judge shopping" process.
  - a. Excessive continuances often result in more lenient outcomes.
  - b. Parties get tired of delayed proceedings and just want to bring matters to an end.
- 11. Men usually are treated unfairly in domestic cases.
  - a. Grandparents are often awarded custody over the father.
  - b. The man is usually assumed to be the aggressor in the domestic disputes.
- 12. The state should study plea agreements and sentencing to determine if both are fair and consistent.
- 13. The Supreme Court should sponsor education programs for judges and lawyers.

#### **IV.**

##### ***Emergent Themes and Perspectives***

##### **Court Users/Group One—Indianapolis/Marion County**

**June 27, 2002**

This focus group was attended by three women (one African American, two Caucasian), two of whom have been defendants in the court system. The other has been a juror and has several family members and friends who have been through the system.

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. In most cases, men are treated more harshly than women, but sometimes the gender unfairness goes the other way.
2. It is very easy and convenient for women to get restraining orders against men.
  - a. One woman drove to the courthouse to get a restraining order, accompanied by the man the order was against. They then drove home together.
  - b. Many women like having restraining orders against their partners because it gives the women control over their partners.
3. Continuances prolong court proceedings unfairly, causing people to stay in jail during delays in proceedings.
4. Men get stiffer sentences than women, especially in drug cases.
  - a. Women use their children to gain sympathy...as the reason they should be spared jail time.
5. The father of one woman's children had his bond reduced from \$80,000 to \$200 after his grandmother called her friend who works at the court house, who "fixed things" for her.
6. Drug sentences are too severe.
  - a. Two women know convicted murderers who have been released after only seven or eight years in jail.
  - b. They also know convicted drug dealers who have sentences of 15 years, 20 years, 25 years...with no parole.
7. One woman almost allowed a judge and his wife to adopt her baby, but changed her mind when the judge made a racist comment.
  - a. The woman is Caucasian; her baby is mixed-race.
8. One woman was told to "shut up and keep quiet" when she went to court with her cousin and offered to custody of her cousin's children while she went to jail.
  - a. The judge was a Caucasian male and treated her with disrespect because she and her cousin are African Americans.
9. Another woman recalled that her cousin was shot in the back twice by his girlfriend and died.
  - a. The girlfriend was acquitted because she said he was beating her prior to the shooting.
  - b. The court never would have acquitted a man under similar circumstances.
  - c. The woman telling the story said she can have her "dude" locked up anytime they fight, because the police always believe the woman's side of the story.
    - i. After he's locked up, she visits him in jail, brings him money and drops the charges so he can get out.
10. The courts are too lenient toward women.
  - a. Two of the women said they could do anything to hurt a man and get away with it, because they know how to gain the judicial system's sympathy.
  - b. "Women can get away with anything."

11. Caucasian women in relationships with African American men are treated unfairly by the court system.
12. Sentencing needs to be changed so that murderers spend more time in jail than drug dealers.

## **V.**

### ***Emergent Themes and Perspectives***

#### **Court Users/ Group Two—Indianapolis/Marion County**

**August 8, 2002**

**This focus group was the second attended by court users in Indianapolis/Marion County. It was attended by nine people who have been defendants in the court system (two black males, four white males, one white female, two black females). All nine participants are currently living in halfway houses.**

***(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)***

1. All participants in this group were living in halfway houses around Indianapolis.
  - a. All participants expressed their appreciation for what the halfway houses were doing to reform and rehabilitate them.
2. Money is the major factor in how people are treated in the court system.
  - a. Financial resources are far more important than race or gender or the charges against you.
  - b. Court appointed lawyers are less effective than lawyers you hire with your own money.
  - c. If you have enough money, you can be found innocent of almost anything.
  - d. One participant said he hasn't been convicted of anything since 1992 when he began using an expensive criminal lawyer.
    - i. Since then, the participant has been arrested more ten times on felony charges and been acquitted or gotten the charges dropped each time.
  - e. Another participant said his lawyer quoted him a specific amount of money to have his sentence reduced.
    - i. The participant paid the money and the sentence was reduced.
3. The courts in some counties surrounding Indianapolis are racially biased.
  - a. In some counties, every judge, lawyer and police officer is Caucasian.
  - b. In those counties, African Americans and Hispanics are at a great disadvantage in the court systems.
4. Most police stops are based on profiling.
  - a. If an African American is seen in a Caucasian neighborhood, the police assume the African American is selling drugs.

- b. If a Caucasian is seen in an African American neighborhood, it is assumed the Caucasian is there to buy drugs.
- 5. Poor, young African American males seem to get the harshest sentences in the courts.
- 6. The system is biased against drug offenders.
  - a. The stigma of a drug arrest follows you throughout your life.
  - b. It's harder to get a job after a drug arrest than it is after other kinds of felony arrests.
  - c. After you've been arrested on drug charges, your choices are to take a minimum wage job or go back to selling drugs, and make much more money.
- 7. The police often beat the people they arrest.
  - a. One man described being beaten so badly after an arrest, inside the police station, that his mother didn't recognize him the next day.
  - b. A woman said the police broke her arm while she was handcuffed.
    - i. Then they charged her with assault and battery on a police officer.
  - c. Another man said he was beaten badly during a DUI arrest.
    - i. The next day in court, his case was lost and he was released.
    - ii. He believes his case was lost because the police who beat him didn't want to explain how he incurred his injuries.
  - d. Several other in the group also said they had been beaten by police.

## **VI.**

### ***Emergent Themes and Perspectives*** **Court Users—Gary/Lake County**

**July 16, 2002**

**This focus group was attended by two Hispanic men.**

***(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.***

- 1. One participant was convicted in federal court of gambling and money laundering.
  - a. Six men, all over 55 years old, were tried together.
  - e. Five were Hispanics, one was Caucasian.
  - f. The five Hispanics were all sent to prison.
  - g. The Caucasian was sentenced to probation.
- 2. The other participant was convicted of DUI and received the maximum sentence.
  - a. He has a Caucasian friend who was stopped shortly afterwards while driving under the influence and was not charged.
    - i. The police drove the Caucasian man home.
    - ii. He was so drunk he doesn't remember being driven home.

3. The language barrier results in Hispanics being treated with greater unfairness than any other group.

## **VII.**

### ***Emergent Themes and Perspectives***

#### **Court Users—Evansville/Surrounding Counties**

**July 23, 2002**

This focus group was attended by ten people who have been defendants in the court system (three Caucasian females, four Caucasian males, two African American females, one African American male). All ten people have recently been released from incarceration.

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. Poverty is a major factor in how well people do in the criminal justice system.
  - a. People who can afford private lawyers get the “best deal.”
  - b. Public defenders do not help the people they represent.
    - i. “They just want you to agree to the first plea agreement you are offered, so they can get your case over with.”
    - ii. “Public defenders don’t make enough money from the courts to offer a decent defense.”
2. The daughter of one area judge overdosed on crack while in the company of a African American man.
  - a. That judge is now especially hard on African Americans.
3. The courts are “plea bargain happy.”
  - a. They want you to plea-bargain everything.
  - b. One man refused to agree to two different plea agreements on charges of attempted rape, because he was innocent.
    - i. The first plea offered eight years in prison.
    - ii. The second plea offered four years.
    - iii. He went to trial, was convicted and served ten years in prison.
      1. While he was in prison, his fourteen-year-old daughter was raped.
      2. The rapist agreed to a plea bargain, served six years in prison, and was released.
4. The Caucasian nephew of one of the Caucasian females in the group was an accomplice in the murder of a Caucasian person.
  - a. The person who pulled the trigger was African American and is now in prison.
  - b. The woman’s nephew was sentenced to probation only (because he’s Caucasian).
5. Medical treatment in prison is terrible.

- a. Several accounts were offered of the denial of medical treatment to the people in the group.
    - i. When treatment was finally offered, the conditions requiring treatment included cancer, gall bladder disease and hernias.
      - 1. Surgery was required in some cases.
  - b. A woman who is clinically schizophrenic was denied her medication for 12 days when she arrived at prison.
    - i. She started hearing voices after three days of being without her medication.
    - ii. She was afraid she would “snap” and do something terrible.
- 6. African Americans are treated worse than Caucasians in the courts and by the police.
  - a. They are presumed guilty before they are even arrested.
  - b. They are treated like they are guilty by the court system, before they are convicted.
  - c. They receive harsher sentences when convicted.
  - d. This view is held by everybody in the group, including the Caucasians.
- 7. The preponderance of Caucasian judges and lawyers makes minorities feel like they will not receive a fair trial.
  - a. Sometimes, since minorities know they’re going to jail anyway, they decide to defend themselves to save money.
- 8. Several people in the group feel they were not given the full terms of their sentencing until they were released from jail.
  - a. Upon release they learned they were required to serve additional time in a halfway facility.
  - b. In some cases, this is at the discretion of their probation officer.

## **VIII.**

### ***Emergent Themes and Perspectives***

#### **Law Enforcement Personnel—Indianapolis/Marion County**

**June 27, 2002**

**This focus group was attended by seven law enforcement officers (three African American males and four Caucasian males) from the Indiana State Police and Indianapolis Police Department.**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

- 1. Calls to domestic disturbances are their most common calls.
  - a. On average, they receive at least three to four such calls per day.
  - b. Generally, the enforcement requirements are unfair to the men in these situations.

- i. Police are required to arrest the man if the woman says she has been assaulted and there is any kind of mark on her body that could have been created by the alleged assault.
    - ii. There are no halfway houses or treatment programs for the men in domestic disputes; the women are offered several such programs.
    - iii. Often men will flee before police arrive at a disturbance because they know they will be held responsible, even when they are not.
    - iv. It is too easy for women to get restraining orders and use them as tools to achieve an unfair advantage in the relationship.
    - v. The courts know restraining orders are being abused, but do nothing about it.
  - c. Officers are often called repeatedly to the same household, even after arrests have been made.
    - i. The court system generally fails to deter repeat offenses.
    - ii. It's too easy for a woman to change her mind about pressing charges.
- 2. Law enforcement officers feel they are not treated with the respect they deserve in court.
  - a. Too often after they've waited for hours to testify, their case is called and a continuance is granted.
  - b. Continuances, in general, are granted too liberally.
  - c. Their behavior in an arrest is often called into question by attorneys, and judges side with the attorneys.
  - d. Police officers are held to higher standards in the legal system than anyone else.
    - i. When judges and attorneys are arrested on drunk driving charges, their cases are "red flagged" (intentionally lost).
    - ii. When police are arrested they are prosecuted with excessive vigor because they are expected to live by a higher standard than the average citizen.
    - iii. When a police officer fails to appear in court because he/she never received notice or a subpoena, the officer is ridiculed in court for not appearing.
  - e. An officer's testimony is often not viewed with credibility
    - i. In one case, a judge acquitted a drunk driver who admitted he had consumed a glass of vodka just before driving.
      - 1. Although it was a "good arrest," the judge granted the acquittal because he said when the man began driving, the vodka had not yet taken its affect on the man's nervous system.
- 3. Judges don't live among the people they see in court and don't understand what life is like in that part of society.
- 4. Generally, Caucasian people receive more leniency in the court system.
  - a. If an African American is cited for speeding at 100 mph, he will likely get an \$800 fine.



- b. If a Caucasian gets the same citation, his fine is likely to be \$350.
- 5. Racial bias in court varies from court to court.
  - a. Some courts go out of their way to be fair, across the board.
  - b. Some do not.
- 6. Generally, judges and prosecutors care less about the outcome of the case than they do about just getting it over with so they can move on to the next case.
- 7. Drug sentencing, and sentencing in general, is influenced largely by politics.
  - a. When MADD shows up in court to observe a drunk driving case, the sentence will be more severe.
  - b. When a crime is featured in the media, the sentence is more likely to be severe.
    - i. For a period of time after a high profile crime, sentences for similar crimes are severe.
    - ii. When the attention dies down and shifts to some other type of crime, sentences are lighter again.
- 8. Minorities assume cops are biased against them, even when they are caught in the act of breaking the law.
  - a. “Police are just doing their jobs.”
  - b. “African Americans think they are being discriminated against, but they shouldn’t be breaking the law in the first place.”
  - c. These same perceptions are present in the courtroom.
    - i. Minorities assume the judge is biased, even when the defendant is guilty of the crime.
- 9. Socioeconomics are the greatest factor in how a person is treated in the legal system.
  - a. People who can afford a good lawyer will receive a better outcome.
  - b. People who live in upscale parts of town and appear to be well-to-do, will usually receive a better outcome.
  - c. Educated people who understand more about the court system, stand a better chance of fair treatment.
  - d. Poor, uneducated people, who tend to be African American, are at an extreme disadvantage in the court system.
- 10. Law enforcement is an extremely frustrating way to make a living.
  - a. Others in the justice system—judges, lawyers, the media—do not respect law enforcement officers.
  - b. People on the streets do not respect them.
  - c. Pay is low.
  - d. Officers can be killed in the line of duty.

## **IX.**

### ***Emergent Themes and Perspectives***

#### **Law Enforcement Personnel—Gary/Lake County**

**July 16, 2002**

This focus group was attended by twelve law enforcement officers from the Lake County Sheriff's Department (one African American woman, one Hispanic woman, two Caucasian women, six Caucasian men, one African American man, one Hispanic man).

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. Lawyers do not respect police officers.
  - a. Prosecutors and defense attorneys try to discredit officers in the courtroom.
  - b. One example was cited of a defendant who shot a police officer and was granted a plea bargain that resulted in no jail time.
2. Money is the primary factor in who “gets off” without jail time.
  - a. Caucasian teenagers whose parents have money (to spend on a good lawyer) are much more likely to avoid jail than African American teenagers without money...when all other circumstances are the same.
3. The courts give too much leeway to Caucasian teens, in general, regardless of financial means.
  - a. Sentencing guidelines always seem to include a loophole that allows favorable treatment when the judge wishes to exercise it.
4. Most felony cases are settled before they get to trial.
  - a. Plea bargaining is “out of control.”
  - b. The full circumstances of the crime and the arrest are never aired when plea bargains are reached.
5. The language barrier is the biggest problem with Hispanics.
  - a. Even misunderstandings (resulting from language) over identification can escalate to more serious situations.
6. Officers receive at least four domestic disturbances calls per day.
  - a. Domestic disturbances have increased since the gambling boats opened.
  - b. Police are forced to arrest the man, even when they know he is not to blame.
  - c. Women who are beaten often “forgive and forget” within a matter of days—then the problem repeats itself.
  - d. Court appearances should be mandatory in domestic disturbance cases.
    - i. Parties to the case should not be allowed to drop the charges without answering to the court.
  - e. Restraining orders are too easy to obtain.

- i. Women who allow their husbands/boyfriends to violate restraining orders should be prosecuted for the violation, along with their husbands/boyfriends.
- 7. Several officers feel that more parents should use corporal punishment in the rearing of their children.
  - a. “More parents need to beat the hell out of their kids.”
  - b. One officer recalled being called to a home by two parents who asked him to go upstairs and “rough up” their son.
    - i. The officer agreed, went up to the boy’s room, and “roughed him up good.”
    - ii. The officer is proud of the fact that the boy has now graduated from college.
    - iii. The officer feels the beating he gave the child was, in part, responsible for the child’s success in college.
- 8. Drug sentencing guidelines are unfair and discriminatory.
  - a. Sentences for crack cocaine are more severe than for cocaine.
    - i. Crack is cheaper and therefore more common in the poor, African American drug culture.
    - ii. Because crack sentences are more severe, poor African Americans spend more time in jail for drug offenses than do Caucasians, affluent drug users.
  - b. Why should someone who waged war against his own country (John Walker Lindh) be sentenced to 20 years/serve 17, when a poor African American male who sells \$100 worth of crack to his friends in the neighborhood has to serve 25 years?
- 9. Police have a thankless job.
  - a. They do their jobs and risk their lives everyday.
  - b. They watch lawbreakers go free and return to the streets to break more laws.

## **X.**

### ***Emergent Themes and Perspectives***

### **Law Enforcement Personnel—Evansville/Surrounding Counties**

**July 23, 2002**

The Vanderburgh County Four-H Fair, a major community festival, was underway on the day of the law enforcement personnel focus group. Most area law enforcement officers work off-duty shifts at the fair. Despite the mailing of 100 letters of invitation and numerous calls to law enforcement officials, ZQI was unable to assemble a group of Evansville law enforcement personnel. One law enforcement officer from the Vanderburgh County Sheriff’s Department (a Caucasian male) attended. As the only officer in attendance, who happened to be the department’s

training supervisor, he participated more as a spokesperson for his organization than as an individual expressing his personal views.

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. The Vanderburgh County Sheriff's Department currently employs two African American officers.
2. There are no Hispanic officers.
3. Recruiting minorities to the department is very difficult.
  - a. The Sheriff's Department is represented at area college recruiting events.
    - i. Minority students, generally, do not want to become police officers.
    - ii. Minority students, generally, do not want to live in Evansville.
4. Officers are trained on minority/sensitivity issues.
5. The officer acknowledges that less than 10% of the area population is African American and that African American people are arrested in disproportionate numbers.
  - a. African Americans are not stopped or unfairly suspected of wrongdoing simply because they are African American.
6. The racial imbalance in the court system—Caucasian judges and attorneys/defendants of color—does not result in unfair treatment.
  - a. African Americans might perceive unfairness, but it doesn't exist.
7. Sheriff's Department officers are well-trained, respectful of each other and the citizenry, and do a good job of keeping the Evansville area safe.

## **XI.**

### ***Emergent Themes and Perspectives***

#### **Non-Criminal Lawyers—Indianapolis/Marion County**

**June 28, 2002**

This focus group was attended by seven attorneys (two Caucasian females, four Caucasian males and one African American male).

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. The women in this group are often referred to by Caucasian males in the court system as “young lady,” and in other ways that they find patronizing.
2. Women are made to feel uneasy by the regular discussions of sports between their male counterparts and judges.
  - a. These discussions make them feel excluded from the male familiarity they experience in the courts, in general.

3. *Ex parte* communication is widespread.
  - a. Such discussion is usually among Caucasian males.
  - b. Women and African-American attorneys feel excluded on the basis of race and gender.
4. The African American attorney in the group recalled one situation where a judge's absent-minded disrespect of a meeting resulted in a series of events that left the attorney's client and her husband dead.
5. Judges sometimes are unfair to attorneys who come from outside Marion County to represent a client.
6. In child custody cases, if one of the parents is planning to move out of Marion County, judges are more likely to rule in favor of the parent who is staying in Marion County.
7. Judges almost never require a woman to pay child support.
  - a. Most attorneys in the group have never seen a case that resulted in a woman being required to pay child support or alimony.
8. Two of the attorneys in the group have heard judges use "the N word," and make other racist slurs.
9. Improvements in the treatment of women in the court system have advanced faster over recent years than have improvements in the treatment of African Americans.
10. Racial discrimination is more overt in the counties surrounding Marion County than it is in Marion County.
11. Recommendations for improvements are:
  - a. Persuade firms to recruit more minority clerks and young lawyers.
  - b. Appoint more minority judges and run more minority judge candidates, especially at the federal level.
  - c. Require that judges and attorneys be trained on a regular basis in the areas of racial and gender sensitivity.
  - d. Make race and gender sensitivity training a requirement in Indiana law schools.
  - e. Require judges to spend more time in the community, getting to know the cultures they see in their courtrooms.
  - f. Add more Hispanic lawyers and judges to the system.

## **XII.**

### ***Emergent Themes and Perspectives***

#### **Non-Criminal Lawyers—Gary/Lake County**

**July 17, 2002**

**This focus group was attended by four attorneys (three Caucasian men and one African American female).**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. The African American female lawyer in the group began by recalling a child custody case in which she and her client were treated unfairly by a Caucasian male judge.
  - a. Both she and her client are African American females.
  - b. The judge made them both feel like they were unimportant to the court.
  - c. The case was allowed to drag on too long, causing the client to exhaust her financial resources.
  - d. There were no overt incidents of racism or sexism; but those feelings on the part of the judge seemed to influence the proceedings.
2. One of the Caucasian male lawyers said he has applied for magistrate positions several times and each time the position has gone to a woman.
  - a. All the magistrates in divorce court are women, creating an unfair situation for men involved in divorce proceedings.
    - i. These divorce courts are favorable to women.
    - ii. Fees are always higher for men.
3. Police have a bad attitude toward the courts and attorneys.
  - a. “Cops want to be in charge all the time.”
  - b. “They don’t run the courts.”
4. Race and gender bias exists throughout the court system, but it’s difficult to pinpoint.
  - a. It’s subtle and difficult to prove.
5. Generally, Caucasian male lawyers are rude and disrespectful to African American female lawyers.
6. Economics are a major factor in most cases.
  - a. Lawyers and clients who have the money can develop much stronger positions.
    - i. They can pay for investigations.
    - ii. They can bring in expert witnesses.
    - iii. They can spend more time preparing.
  - b. High priced lawyers are not inherently better lawyers.
    - i. They succeed because they and their clients have the resources needed to build the best strategy.
7. Politics and cronyism are big problems in Gary/Lake County.
  - a. Democrats have ruled for generations and republicans are at a severe disadvantage, in general.
  - b. Cronyism goes back as far as anyone can remember.
  - c. If you’re not in the “inner circle” you have a hard time winning against those who are.
  - d. Winks and whispers among cronies can be observed in courts everyday.
  - e. There has been an “old boys’ club” in Lake County for decades.
    - i. It consists of Caucasian male judges and lawyers.
  - f. Now a “girls’ club” is emerging.

- i. It consists of female lawyers, judges and magistrates who work in divorce courts.
- 8. Continuances are at the root of many court problems.
  - i. They are especially unfair in family law, where outcomes favor the parent who can exhaust the other parent's resources.
    - 1. These cases should be decided in the best interests of the children.
  - ii. Continuances often seem to delay proceedings for no good reason.
  - iii. They are often used because without continuances lawyers would not be able to afford to make a living.
    - 1. They permit lawyers to juggle numerous cases, while continuing to bill their clients through this extended process.

### **XIII.**

#### ***Emergent Themes and Perspectives***

#### **Non-Criminal Lawyers—Evansville/Surrounding Counties**

**July 24, 2002**

**This focus group was attended by seven attorneys (all Caucasian males).**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

- 1. Generally, what these attorneys remember most about their respective careers are the situations where they were able to help a client get out of trouble.
  - a. Some recalled thank you notes they have received.
  - b. Child custody cases that result in the best interests of the children also are memorable.
- 2. Most attorneys can recall situations when judges have fallen asleep during trials.
- 3. Some judges are rude and condescending.
- 4. It is the job of a good attorney to know each judge's tendencies and "shop" each case for the judge most likely to favor your side of the case.
- 5. Racism occurs more at the front end of the law—at the time of the arrest—than it does in the courts.
- 6. The racial bias in the courts is a reflection of human nature.
  - a. Every human being has some kind of bias.
  - b. The bias in the courts is a natural extension of what people feel in their everyday lives.
  - c. The discrimination that exists in the courts is subtle; it's not outrageous.
  - d. It is the attorney's job to select a jury that will not be prejudicial from a racial standpoint.

7. One attorney has represented several wealthy African American professionals who feared that they might be treated unfairly because they are African American and wealthy.
  - a. In the eyes of many, African Americans are not entitled to be wealthy.
8. None of the lawyers accept or reject their clients on the basis of race.
  - a. They accept their clients on the basis of economics.
    - i. Can the client afford to pay the fees?
9. All the lawyers in this group agreed that female attorneys are accepted among their ranks and treated as equals.
10. The Evansville court system is fair and equal for all.
  - a. The perception that it is unfair toward women and minorities is the problem.
  - b. Having more minority and female judges and lawyers will change that perception.
  - c. The fact that this is a perception and not the reality makes it more of a problem for the people who hold this perception than for the court system itself.
11. Because less than 10% of the population is African American and at least 50% of criminal defendants are African American, there must be a problem somewhere in the community.
  - a. Though this doesn't mean the legal system is biased.

## **XIV.**

### ***Emergent Themes and Perspectives***

### **Criminal Lawyers—Indianapolis/Marion County**

**June 28, 2002**

**This focus group was attended by nine attorneys (one Caucasian female and eight Caucasian males).**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. Some attorneys acknowledged what they refer to as “the king complex,” so called because certain judges behave as if they are the kings of their courtrooms.
  - a. These judges exercise excessive power and authority.
2. Some judges are too cooperative with prosecutors.
  - a. Their common practices border on *ex parte*.
3. Federal court judges tend to be more stubborn and unfair than other judges and magistrates.
4. The female attorney in the group recalled a case in which she believed she was treated unfairly by the judge because he didn't want the case to go to trial.
  - a. The judge thought it should have been settled through plea bargaining.



- b. Because the attorney refused to agree to the plea, the judge discredited her throughout the trial.
  - c. The attorney felt that the judge would not have been as combative with a male attorney in the same situation.
  - d. Another attorney indicated that this judge has done this in other cases.
- 5. One attorney reported that judges often mistake her African-American intern as her defendant/client.
- 6. Minorities receive higher bonds.
  - a. People who are less able to afford higher bonds receive the highest bonds.
  - b. Poverty is a major cause of unfair treatment in the courts.
- 7. Young African American males are treated unfairly across the spectrum of the justice system, beginning with the police.
  - a. They are feared by the Caucasian culture and profiled as suspicious by law enforcement.
  - b. These factors result in more minor arrests of young African American males, which start them on a downward spiral through life on the wrong side of the law.
- 8. Public defenders need the time to show more concern for their clients.
- 9. Legislators view crime as a political problem, solved by legislation for stiffer sentences.
- 10. In general, drug sentences are too harsh, which results in excessive incarceration of minorities.
  - a. Minorities are more likely to be arrested on drug charges because police are more likely to question them without probable cause.
  - b. Because more of them are arrested, a disproportionate number of minorities end up in prison, serving long sentences for drug offenses.
  - c. We're losing the "war on drugs."
- 11. The laws governing domestic disturbances unfairly favor women.
  - a. Too many men are arrested on "trumped up" charges.
- 12. The courts are especially unfair to people who are homosexual.
  - a. There is little sympathy in the courts for victims of domestic violence among homosexual couples.
  - b. Homosexuality is a liability in divorce and child custody cases.
- 13. The perception of unfair treatment in the court system is a serious problem.
  - a. The fact that the reality is not as bad as the perception is insignificant.
  - b. That the system is perceived to be unfair perpetuates resentment, mistrust, and the belief that the justice system does more to harm people than it does to protect them.
  - c. This perception filters across the culture and affects how people behave.
- 14. The most prevalent cause of unfair treatment in the courts is poverty.
  - a. The people at the greatest disadvantage are those lacking the financial resources and education necessary to protect their interests.

## **XV.**

### ***Emergent Themes and Perspectives*** **Criminal Lawyers—Gary/Lake County**

**July 17, 2002**

**This focus group was attended by three attorneys (one African American female, one Caucasian male, one Hispanic female).**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. Mandatory sentences for repeat offenders are unfair.
  - a. One attorney had a client who was sentenced to 18 years in prison for stealing a one-hundred-dollar power tool.
    - i. This person was an alcoholic who had been convicted twice for stealing less than \$100 worth of property while intoxicated.
    - ii. He's in prison with 12 years left on his sentence.
2. Too many defendants elect to defend themselves.
  - a. Defendants often mistrust lawyers, and think they are better off defending themselves.
  - b. Many defendants think they're better off saving the legal fees...the outcome will be the same with or without the lawyer.
  - c. Judges should do a better job of presenting the risks of a *pro se* defense.
3. Minority defendants are treated unfairly by the court system.
  - a. Jurors, who are predominantly Caucasian, believe that minority defendants must have done something wrong or they wouldn't have been arrested.
  - b. Arresting inner-city citizens is the "easy way out" for the police.
    - i. Inner-city citizens are easier to pick up off the streets.
    - ii. They are less likely to mount a strong defense.
    - iii. Minorities from the inner-city are more likely to be convicted.
    - iv. The media perpetuates the stereotype that inner-city minorities are criminals.
  - c. Caucasian defendants from the suburbs are more likely to investigate the arrest and mount a strong defense.
4. Who you know and how well you know the judge is more important than how good you are as an attorney.
5. Public defenders are generally very good attorneys.
  - a. They are at a disadvantage because of their limited financial resources.
  - b. They are viewed by some other attorneys as second-class.
  - c. They are not paid enough to cover their fixed overhead.
    - i. Their small fees leave nothing for the outside expenses inherent in a good defense.
6. Juvenile court is racially imbalanced and unfair.
  - a. Most juvenile defendants are people of color.

- b. All the judges are Caucasian.
- c. The judges do not understand what life is like for the minority juveniles that come before them.
- d. Judges often detain minority juveniles for long periods.
  - i. Kids have not always been proven guilty.
  - ii. They have no right to bail.
  - iii. They spend weeks in detention centers awaiting hearings.
    - 1. This builds resentment that stays with them throughout their lives.
    - 2. They make friends in the detention centers and later conspire with these friends to commit new crimes.
- e. Caucasian kids from the suburbs are usually released without being detained.

## **XVI.**

### ***Emergent Themes and Perspectives***

### **Criminal Lawyers—Evansville/Surrounding Counties**

**July 24, 2002**

**This focus group was attended by four attorneys (three Caucasian males, one Caucasian female).**

***(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)***

1. The discussion began with one attorney recalling a situation where his client was punished for exercising his right to a jury trial.
  - a. The judge was offended that the defendant preferred a jury over the judge's decision.
  - b. The judge sentenced the defendant to the maximum sentence on every count.
2. One attorney thinks Hispanics get better treatment than African Americans.
  - a. They are given the benefit of doubt in questions effected by a language problem.
  - b. They tend to get lighter sentences than African Americans in drug cases.
3. African Americans have a general mistrust of the criminal justice system.
4. Another attorney sees a developing mistrust among Hispanics for the court system.
  - a. In one case, the judge refused to pay for a court interpreter.
  - b. Because there would not be an interpreter during the trial, the defendant was forced to accept a plea agreement.
5. The group believes police, in general, are biased against African Americans.
  - a. In subtle ways, police fabricate facts and falsify evidence.

- b. This leads to more African American convictions.
- 6. The drug laws regarding the sale of drugs within 1,000 feet of a school are unfair to African Americans.
  - a. When you draw a 1,000-ft. radius circle around all the urban schools, you cover most of the neighborhoods where African Americans live.
  - b. This is unfair because far fewer Caucasians live within 1,000 feet of a school.
  - c. This means that the very same offense can have far more serious consequences for African Americans.
- 7. The war on drugs is not working.
- 8. Generally, sentencing is fair across racial lines.
  - a. There is a perception that sentences are more severe for minorities, but that is perception only.
  - b. The perception is a result of there being a high percentage of minority defendants.
- 9. Police are guilty of racial profiling.
  - a. The courts need to do something about it.
  - b. Too many arrests begin with racial profiling.
  - c. Six percent of the population is African American, at least 50% of those people arrested are African American.
  - d. The majority of the police patrol in the areas where six percent of the population lives.
  - e. The courts, which see all the cases and observe the trends, are the place where this has to be stopped.
- 10. Judges need to be exposed to more social levels
  - a. Judges that are more socially-aware are better judges, more fair.
- 11. Socioeconomics are a major factor in a defendant's chances for fair treatment.
  - a. With more money attorneys can bring in experts, take the time to build a strong case.
  - b. Public defenders are good attorneys but are limited in their resources
- 12. The good-old-boys' network exists in Vanderburgh County.
  - a. But it's worse in surrounding counties.
- 13. Judge shopping and prosecutor shopping is an important part of the game.
- 14. Generally, judges are more lenient with female defendants.
  - a. Responsibility for a child/providing childcare is an effective excuse for avoiding jail or getting out of jail early.
  - b. Women know this and use it to their advantage.
  - c. Some women have gotten pregnant between their arrest and their trial because they know pregnancy will gain sympathy and leniency.
  - d. A male attorney said he is at a severe disadvantage whenever the opposing attorney is visibly pregnant.
  - e. The female attorney said she has to be careful not to be too tough in court.
    - i. She doesn't want to be perceived as a "bitch."
    - ii. She wants to behave like the girl next door or someone's daughter.

15. This group recommends more communication between the system and the people in it.
  - a. People need to understand their rights and how the process works.

## **XVII.**

### ***Emergent Themes and Perspectives***

#### **Lawyers of Color—Indianapolis/Marion County**

**August 8, 2002**

**This focus group was attended by nine attorneys (two African American females, two Hispanic females, two African American males, three Hispanic males).**

***(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)***

1. Hispanics are at a serious disadvantage in the court system.
  - a. Competent interpreters are usually unavailable.
    - i. One attorney in the group had to terminate an Hispanic employee because she was not able to communicate in English.
    - ii. The terminated employee was then hired as a court interpreter.
  - b. Hispanic arrests often result from racial profiling and poor communication at the time of arrest.
  - c. Hispanics have been lied to by the courts.
    - i. They are told they have the choice of going back to their home country or spending months in jail while they await trial.
2. Judges are insensitive to the cultural ties of Hispanic defendants.
  - a. English-speaking substance abuse programs are sometimes ordered for people who don't speak English.
  - b. One lawyer was told by a judge that if the defendant needed an interpreter he would have to provide one at his own expense.
3. In general, judges are not culturally aware.
4. African American attorneys often file for a change of venue when they feel the court is racially biased.
5. Minority lawyers from large firms are treated with more respect in outlying counties than are minority lawyers who are sole practitioners or members of small firms.
6. Minority lawyers in some large firms are not considered for senior partner status because of their ethnicity.
7. One African American female lawyer recalled being treated with respect on the telephone by lawyers and judges who had not met her in person.
  - a. When they met her in person, and realized she is African American, she was treated with less respect.
8. African Americans and Hispanics are not equally represented in the system.

- a. There needs to be continued change in this direction.
- b. “We’re not there yet.”

## **XVIII.**

### ***Emergent Themes and Perspectives***

### **Female Lawyers—Indianapolis/Marion County**

**August 8, 2002**

**This focus group was attended by seven attorneys (six Caucasian females and one African American female).**

*(The order in which these findings are listed is arbitrary and should not suggest a ranking of the importance of each idea. These statements are expressions of opinion and perception, as put forth in this focus group; they are not intended as fact.)*

1. Balancing the responsibilities of motherhood and a career as a lawyer is a serious challenge.
  - a. Courts and employers today are more understanding than they have been in years past.
2. It has been a struggle over the years to gain equal respect from the men in the legal profession.
  - a. One lawyer recalled not being invited to client lunches and dinners because of gender bias.
  - b. “Sports talk” among men is exclusionary in the company of female colleagues who do not follow sports.
  - c. Another lawyer was told by her boss that salaries and bonuses are more important for men than they are for women.
  - d. Another lawyer has been told by male colleagues that the reason she gets promoted is that she is a women, not because she is a good lawyer.
3. Many male attorneys attempt to intimidate female attorneys “right off the bat” in court proceedings.
  - a. If the female responds aggressively, she is perceived as a “bitch.”
4. One attorney’s client blamed their loss in court on the fact that she is a “lady attorney.”
5. Judges are more critical of female attorneys who behave emotionally in court.
  - a. Male attorneys can behave with high emotion, at times, and their behavior is accepted.
  - b. When female attorneys behave in the same way, judges criticize them for “acting emotionally.”
6. In long jury trials, female attorneys need different outfits everyday.
  - a. Male attorneys can wear the same two or three suits, and juries think nothing of it.
  - b. If female attorneys wear the same two or three suits, juries take notice.

- c. In one case, after a long medical malpractice trial, which the female attorney won, the jury complimented her on “a lot of really neat outfits.”
- 7. One female judge in Marion County is prejudiced against female attorneys.
  - a. All those attorneys who have been before her agree.
  - b. She is rude to female attorneys and favors the opposing attorneys when they are male.
- 8. Government agencies treat their female lawyers with respect and equality.
  - a. Gender bias is most likely to occur in large law firms.
- 9. Government agencies are more sensitive to the accommodation and equal treatment of people with disabilities.
- 10. More professional courtesy is needed in courtrooms.
  - a. Judges need to be friendlier and more respectful.
  - b. Civil court is the place where this problem is the worst.
- 11. Some judges need more control over their courtrooms.
- 12. There is a “glass ceiling” in most major Indianapolis law firms.
  - a. Some have never had a female equity partner.
  - b. It takes women longer to become partners than it does men.
  - c. Management committees in some firms openly discuss hiring and promotion based on gender.
- 13. All participants agree that treatment of female lawyers has made great strides over recent decades and continues to improve.

# D

## APPENDIX



## **2001 Community Forum Report**<sup>\*</sup>

During Summer 2001, the Commission on Race and Gender Fairness hosted seven Community Forums in six locations across Indiana. The forums, which commenced in Evansville and concluded in Indianapolis, included one forum conducted entirely in Spanish. Local organizing committees in each site location assisted the Commission by publicizing the events in their communities to attract as many interested parties as possible so that the Commission could hear first-hand what concerns people around the state had about race and gender fairness in Indiana's justice system.

The community forums were held in the following cities and locations on the dates listed below:

### Evansville

July 12, 2001	University of Evansville	60 participants
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### New Albany

July 19, 2001	Scribner Jr. High	35 participants
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### Fort Wayne

July 25, 2001	Indiana University-Ft. Wayne	60 participants
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### Gary

August 1, 2001	Indiana University- Northwest	
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### Lafayette

August 2, 200	YWCA	32 participants
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### Indianapolis

August 8, 2001	Indianapolis Bar Assn. Center	40 participants
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### Indianapolis

August 9, 2001	Hispanic Center	
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A uniform format was established for each forum. First, Commission Chair Myra Selby or Vice-Chair Ezra Friedlander greeted the attendees. Next, everyone viewed the video presentation narrated by Justice Selby about the mission and purpose of the Commission along with goals for the community forum. Participants were then placed in small groups to discuss the following standard questions:

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<sup>\*</sup> This summary of the community forums was prepared by Chasity Thompson, who attended the forums in connection with an internship with Commission as a third-year law student during 2001 and in early 2002.

- What has been your experience with Indiana's Judicial System?
- What is your perception of the Judicial System?
- How would you improve the Judicial System?

After the groups met, they reassembled to hear summaries of the small group discussions.

Several common themes arose from the forums. Among them included a need for more education about the judicial system, language and cultural barriers within the judicial system, a more user friendly court system, and more frequent use of community forums to seek public opinion. One dominant recurring theme voiced at each community forum was the need to establish or improve court interpreter programs.

"When it comes to justice, I feel that I am not entitled to it," stated one frustrated participant during the Evansville forum. Another participant at the same forum stated "Justice is not blind; She sees all, hears all, and makes judgments based on money." Their sentiments were echoed throughout the forums. The general perception -- that the judicial process is unjust -- spanned across race, ethnic, and gender borders.

### ***Individual Comments***

In Evansville, participants expressed great concern about race relations and an overall frustration with the judicial process. "Cronyism" was one description given by an Evansville native. "People in the system want to protect each other. No one cares about justice." The more than 60 people in attendance also expressed a deep concern about bias in the courts and the lack of minority representation. Also, participants suggested that all court officials undergo diversity training to better serve the community.

Unjust practice and a lack of professionalism were sentiments expressed during the New Albany forum. Approximately 35 members from the New Albany, Jeffersonville, and Corydon communities attended. "I do not feel comfortable if my case goes before certain judges in this county. I am guilty before I even state my case," one participant from Jeffersonville said. In addition, participants expressed a great concern about racial profiling by law enforcement in the area.

"A need for tolerance and change," was the suggestion of one participant during the Fort Wayne community forum. The audience, which included more than 60 in attendance, expressed concerns about cultural and language barriers. They discussed a need for better interpreter services and at least a few people who are bilingual in the courts.

The Gary participants discussed a greater need for more diversity, concerns about racial profiling and other discriminatory practices and problems for people who speak English as a second language, if at all. "The perception is that the more rural the county the greater the problem," stated one mother from Gary. Another participant

noted that “No one wants real justice. Everyone is concerned with getting the case through the system.” One suggestion made during the Gary forum was the installation of cameras in courtrooms to help decrease bias and unjust proceedings during trial.

“Disrespect for people who are different” was one statement by a West Lafayette resident during the Lafayette community forums. Transgender discriminatory practices during court proceeding and a need for certified court interpreters were the topics most discussed. Approximately 32 people attended the forum, including a Hispanic family who discussed the problems they faced during a court visit because of English as second language. Participants also expressed concern that their court appointed representatives and juries were not representative of the makeup of the community.

Transgender issues and court interpreter problems were the focal points of the Indianapolis forums. During the first meeting, several members of the transgender and homosexual community voiced concerns about discriminatory practices during routine court proceedings, access to the courts, and apprehension about profiling. “We do not get a fair break, and this is the largest city in Indiana,” stated one participant. “The members of the court should learn the importance of tolerance.” Approximately 40 people attended the general forum.

“We need court interpreters. We need members of the justice system to understand our cultural differences. We need the police to stop racial profiling.” These were concerns translated by one participant during the all-Spanish speaking forum. With the influx of Hispanic persons residing in Indiana, there is a need for a standard court interpreter program.

### ***Common Themes***

Although each forum had a prominent theme that arose and reflected particular concerns of those in attendance, several common themes surfaced in all of the forums. They included:

- A need for more education about the judicial system;
- A need for a more diverse bench and also more diverse court staff and bar -- elect, rather than appoint, judges to accomplish this;
- The court interpreter system is nonexistent in some areas and in need of substantial improvements in others; there is no accountability for existing interpreters, who may or may not interpret correctly;
- Language and cultural barriers within the judicial system, particularly for people for whom Spanish is a first language, are huge and need to be toppled;

- The court system should be more user friendly; it is too expensive, too cold, too complicated, too lengthy;
- Race plays a role in decision-making, both for juries and judges, and determines how individuals will be treated from their first entry into the judicial system until they leave it;
- Much of the public does not distinguish between judges and prosecutors and police; they are all on the same side and are not held accountable; and
- Courts should seek public opinion, through community forums or other methods, more frequently.

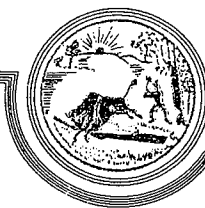
# E

## APPENDIX

# STATE OF INDIANA

## SUPREME COURT

RANDALL T. SHEPARD, CHIEF JUSTICE



INDIANAPOLIS 46204-2798

304 STATE HOUSE  
(317) 232-2550

August 30, 2002

Hon. Myra Selby, Chair  
Hon. Ezra Friedlander, Co-Chair  
Indiana Supreme Court Commission  
on Race and Gender Fairness  
Indianapolis, Indiana

Dear Judges Selby and Friedlander,

My colleagues and I thank you for submitting the Commission's Interim Recommendations, which center on the need to reduce language barriers. The recommendations are thoughtful and prudent, and the Court has approved most of them.

Recommendations I and II, Interpreter Consortium/Spanish Focus. We have authorized the Executive Director of the Division of State Court Administration to take the necessary steps for the Supreme Court to join the State Court Interpreter Certification Consortium through the National Center for State Courts and to implement a court interpreter testing system for Spanish.

Recommendation III, Advisory Board/Staff. We have authorized the Executive Director to make the necessary office management steps to provide a qualified bilingual staff to administer the program and to assist the Supreme Court in recruiting members for the recommended Advisory Board. Indeed, we already have someone in mind. Our primary candidate is Anthony Zapata, an attorney fluent in Spanish who has excellent experience in projects helping self-represented litigants.

Recommendation IV, Interpreter Ethics. The Court has approved in principle the concept of a code of ethics for interpreters. It will take some additional time to review and pass on the specifics, but we anticipate having a code in place as the interpreter program gets going.

Recommendation V, Certification Standards. The Court has approved the concept of setting specific certification standards. We will look to the new Advisory Board to assist in setting the actual passing percentage level when we in Indiana have a better

opportunity to familiarize ourselves with the nature of the test and the cadre of applicants we may have.

Recommendation VIII, Orientation and Training. We agree that a strong need exists for training and orientation for interpreters, judges and court staff. As with the many of other recommendations that have a fiscal impact, of course, we are mindful of the fact that we do not hold the purse strings. To the extent judicial training could be accommodated by the existing judicial education structure, we will seek to provide it. And to the extent the Commission has funding available for orientation of the interpreters, we would approve.

Recommendation IX, Certifying Interpreters. We are inclined to adopt your recommendation that we follow the Consortium testing process. Given the fact that this is all new to Indiana, we may need to amend the process if during implementation it becomes necessary to make changes to fit Indiana's needs. We anticipate that these sorts of details, as well as other minimum qualifications, are the sorts of tasks on which we will seek advice from the Advisory Board which we will convene.

Recommendation X, List of Interpreters. We approve the creation of a database and other resources which we will make available to the trial courts.

Recommendation XI, Miscellaneous. These proposals appear promising. We expect they may be developed further as the project becomes operational within the Division of State Court Administration and the Advisory Board and the Commission proceed.

Recommendations VI and VII, Certification Requirement/Finance. The recommendation that only Consortium-certified interpreters be used in Indiana's courts needs further examination. In particular, we need to have a better understanding of the how much is now paid for interpreters, who bears this cost, if and how the cost would change if certified interpreters are mandated, and who should bear the increase.

As the Commission and the Advisory Board develop some of this sort of information, it will be possible to decide how much we can accomplish through grants to counties under the present Commission appropriation. This data should also assist us in making the case for the request that the State finance the interpreter program, a request we recently made in the Supreme Court's biennial budget submission. We hope the Commission will assist in promoting this request.

We thank you for your excellent work, and we look forward to joining the Commission in finding ways to finance a statewide effort to improve court interpretive services in Indiana.

Sincerely,

*Randall T. Shepard*

Randall Shepard  
Chief Justice of Indiana



# F

## APPENDIX

# Acknowledgments

This Report and Recommendations represents efforts not only on the part of the individual Commissioners but by those who worked with the Commission and by those who came before. As a result, the Supreme Court Commission on Race and Gender Fairness is grateful to the contributions of the following organizations and individuals:

## **Commission Staff**

Janice E. Kreuscher, Official Reporter/Staff Counsel for the Commission

Kimberly Bradford and Anthony Zapata, Staff Attorneys at the Office of State Court Administration

Ruth Rivera and Chasity Thompson, Legal Interns with the Office of State Court Administration

Jonathan Bryant, Law Student Volunteer/Intern

## **Indiana Contributors**

The Deans and Placement Directors (and their staffs) of Indiana University School of Law-Indianapolis; Indiana University School of Law-Bloomington; University of Notre Dame School of Law and Valparaiso University School of Law

Women and the Law Committee of the Indiana State Bar Association

Citizens' Commission for the Future of the Indiana Courts and Judicial Administration  
Commission of the Indiana Judicial Conference (Juries for the 21st Century)

Members of Local Organizing Committees for the Community Forums  
Facilitators at Community Forums

Indiana Department of Correction

Judges, attorneys, court employees, court users and members of the public who attended public forums, completed surveys, participated in focus groups and provided the information that made this Report possible

## **Speakers/Consultants**

Borshoff Johnson Matthews -- public relations

Patricia Castenado, Hispanic Services Coordinator of the Marion County Prosecuting Attorney's Office -- cultural barriers

Annette Craycraft, Executive Director of the Indiana Commission on Women

Cummins Inc. -- Diversity training

Sara Davies, co-Chair of the Juries for the 21st Century Project -- facilitators for community forums

Fiona Devon, Director of Global Diversity and Leadership Development of Cummins Inc. -- participation in activities of the Commission and diversity training

State Representative. Linda Lawson -- law enforcement issues

Dr. Nancy Nicholson, Professor of Linguistics at the University of Delaware -- certified interpreter programs

The Hon. Gregory K. Scott, Associate Justice of the Colorado Supreme Court and member of the National Consortium on Racial and Ethnic Bias in the Courts

And numerous other judges, attorneys, bar association and administrative officers and employees who generously shared information and gave advice

## **Commissions/Committees Outside Indiana**

Judicial Council of California, Racial & Ethnic Bias Advisory Committee

District of Columbia Courts, Task Force on Racial & Ethnic Bias & Gender Bias

Connecticut Judicial Branch, Task Force on Minority Fairness  
Connecticut Task Force on Gender, Justice and the Courts

Florida Supreme Court, Racial & Ethnic Bias Study Commission  
Florida Supreme Court Gender Bias Study Commission

Task Force on Racial/Ethnic Fairness in Kentucky Courts

Massachusetts Supreme Judicial Court, Gender Equality Advisory Board

Michigan Supreme Court, Task Force on Racial & Minority Issues in the Court

Missouri Task Force on Gender and Justice

Nevada Supreme Court, Gender Bias Task Force

New Jersey Supreme Court, Task Force on Women in the Courts

New Mexico Supreme Court, Committee to Study Racial & Ethnic Fairness and Equality in the Courts

New York State Judicial Commission on Women in the Courts

North Dakota Supreme Court, Gender Fairness Commission

Ohio State Supreme Court & State Bar Commission on Racial Fairness  
Ohio Joint Task Force on Gender Fairness

Supreme Court of Texas, Gender Bias Task Force of Texas

Virginia Conference of Chief Justices, Task Force on Gender Bias & Minority Concerns

State of Washington, Minority and Justice Commission

West Virginia Supreme Court of Appeals, Task Force on Gender Fairness in the Courts

Federal Judicial Center

American Bar Association Commissions on Women in the Profession and on  
Opportunities for Minorities in the Profession





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Photo Credit: Honorable Jeffrey R. Smith of the Carroll Superior Court located in Delphi Indiana.

The picture of the Carroll County courthouse rotunda was taken shortly after the September 11, 2001, terrorist attacks when an American flag was raised in honor of the heroes and the victims of that tragedy.